

LAURENCE W. PARADIS (California Bar No. 122336)
STUART SEABORN (California Bar No. 198590)
MICHAEL S. NUNEZ (California Bar No. 280535)
DISABILITY RIGHTS ADVOCATES
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716

JAY KOSLOFSKY (California Bar No. 97024)
LAW OFFICES OF JAY KOSLOFSKY
P.O. Box 9236
Berkeley, CA 94709
Telephone: (510) 280-5627
Fax: (510) 845-3707

Attorneys for Plaintiffs

(Additional attorneys listed on next page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LIGHTHOUSE FOR THE BLIND AND
VISUALLY IMPAIRED, on behalf of itself
and all others similarly situated, ANGELA
GRIFFITH, on behalf of herself and all others
similarly situated, LISAMARIA MARTINEZ,
on behalf of herself and all others similarly
situated, JOSH SAUNDERS, on behalf of
himself and all others similarly situated,
SHANA RAY, on behalf of herself and all
others similarly situated, and JENNIFER
WESTBROOK, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

REDBOX AUTOMATED RETAIL, LLC,
AND SAVE MART SUPERMARKETS,

Defendants.

Case No.: C12-00195 PJH

**JOINT MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Date: July 30, 2014
Time: 9:00 AM PST
Place: Courtroom 3- 3rd floor, 1301 Clay
Street, Oakland, CA 94612
Judge: Hon. Phyllis J. Hamilton

1 Sue Stott (Bar No. 91144)
SStott@perkinscoie.com
2 PERKINS COIE LLP
Four Embarcadero Center, Suite 2400
3 San Francisco, CA 94111-4131
Telephone: 415.344.7000
4 Facsimile: 415.344.7050

5 Amanda J. Beane (*pro hac vice*)
ABeane@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendants
REDBOX AUTOMATED RETAIL, LLC and SAVE MART SUPERMARKETS
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	Introduction.....	2
II.	The Parties	4
III.	Procedural History and Settlement Negotiations.....	5
	A. Pre-Litigation Stage and Initial Litigation	6
	B. Settlement Negotiations	6
IV.	Summary of the Settlement.....	7
	A. Modifications to Redbox Kiosks in California and Redbox’s Website	7
	B. Remote Customer Assistance	8
	C. Monitoring Compliance with the Agreement	9
	D. Responding to Complaints from Blind and Visually Impaired Customers	9
	E. Duration of Agreement	10
	F. Damages Settlement Fund	10
	G. Opt-Out Right	12
	H. Notice.....	13
	I. Release of Injunctive and Damages Claims.....	13
	J. Payment to Named Plaintiffs	14
	K. Dispute Resolution Process.....	14
	L. Attorneys’ Fees and Costs	14
	M. Class Action Fairness Act Compliance.....	15
V.	Legal Argument	15
	A. Certifying the Class Is Appropriate Under FRCP 23(a) and (b)(3)	15
	1. The Proposed Class Meets the Numerosity, Commonality, Typicality, and Adequate Representation Requirements of Rule 23(a).....	16
	2. The Proposed Class is Also Sufficiently Ascertainable.....	19
	3. The Proposed Class Meets the Requirements of Rule 23(b)(3)	20

1	B.	Preliminarily Approving the Proposed Settlement Agreement Is	
2		Appropriate	22
3	C.	The Court Should Direct Distribution of the Notice of Settlement	25
4	D.	The Service Award Payments to Class Representatives are	
		Justified and Reasonable	32
5	E.	The Court Should Approve the Proposed Scheduling Order	33
6	VI.	Conclusion	33

TABLE OF AUTHORITES

Cases

<i>Abdullah v. U.S. Sec. Associates, Inc.</i> , 731 F.3d 952 (9th Cir. 2012)	17, 20
<i>Amchem Products, Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	20, 22
<i>Armstrong v. Board of School Directors</i> , 616 F.2d 305 (7th Cir. 1980)	22
<i>Armstrong v. Davis</i> , 275 F.3d 849 (9 th Cir.2001)	17
<i>Arnold v. United Artists Theatre Circuit, Inc.</i> , 866 F. Supp. 433 (N.D. Cal. 1994)	16, 20
<i>Astiana v Kashi Co.</i> , 291 F.R.D. 493 (S.D. Cal. 2013)	19
<i>Bolton v. U.S. Nursing Corp.</i> , 2013 WL 5700403 (N.D. Cal. Oct. 18, 2013)	32
<i>Boston v. Paul McNally Realty.</i> , 216 F.3d 827 (9th Cir.2000)	21
<i>Evon v. Law Offices of Sidney Mickell</i> , 688 F.3d 1015 (9th Cir. 2012)	16, 17, 18
<i>Gay v. Waiters' & Dairy Lunchmen's Union</i> , 489 F. Supp. 282 (N.D. Cal. 1980), <i>aff'd</i> , 649 F.2d 531 (9th Cir. 1982)	16
<i>Glass v. UBS Financial Services, Inc.</i> , 2007 WL 221862 (N.D. Cal. Jan, 26, 2007)	32
<i>Gray v Golden Gate National Recreation Area</i> , 279 F.R.D. 501 (N.D. Cal. 2011).....	7
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	17, 18, 19, 21, 22, 23
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir.1992)	18
<i>Harris v. Alvarado</i> , No. 08-16860, 2010 WL 4296636 (9th Cir. Oct. 28, 2010)	17
<i>Horton v. Merrill Lynch</i> , 855 F. Supp. 825 (E.D.N.C. 1994)	22
<i>In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation</i> , 722 F.3d 838 (6th Cir. 2013)	20

1	<i>In Vandervort v. Balboa Capital Corp.</i> ,	
2	--- F. Supp. 2d ----, 2014 WL 1274049 (C.D. Cal. March 27, 2014)	11
3	<i>Lane v. Facebook, Inc.</i> ,	
4	696 F.3d 811 (9th Cir. 2012)	12, 22, 23
5	<i>Lanovaz v. Twinings North America, Inc.</i> ,	
6	2014 WL 1652338 (N.D. Cal. April 24, 2014).....	19
7	<i>Leyva v. Medline Industries, Inc.</i> ,	
8	716 F.3d 510 (9th Cir.2013)	22
9	<i>Mazza v. Am. Honda Motor Co.</i> ,	
10	666 F.3d 581 (9th Cir.2012)	17
11	<i>McCrary v The Elations Co., LLC</i> ,	
12	2014 U.S. Dist. LEXIS 8443 (C.D. Cal. Jan. 13, 2014)	19
13	<i>Meyer v. Portfolio Recovery Associates,</i>	
14	<i>LLC</i> , 707 F.3d 1036 (9th Cir. 2012)	18
15	<i>Mullane v. Central Hanover Bank & Trust Co.</i> ,	
16	339 U.S. 306 (1950).....	25
17	<i>Murillo v. Texas A&M Univ. Sys.</i> ,	
18	921 F. Supp. 443 (S.D. Tex. 1996).....	23
19	<i>Nachshin v. AOL, LLC</i> ,	
20	663 F.3d 1034 (9th Cir.2011)	12
21	<i>Nat’l Fed’n of the Blind v. Target, Corp.</i> ,	
22	582 F. Supp. 2d 1185 (N.D. Cal. 2007).....	7, 21
23	<i>Nwabueze v. AT&T, Inc.</i>	
24	2013 WL 6199596 (N.D. Cal. Nov. 27, 2013)	33
25	<i>Peters v. National R.R. Passengers Corp.</i> ,	
26	966 F.3d 1483 (D.C. Cir. 1992).....	25
27	<i>Radcliffe v. Experian Info. Solutions</i> ,	
28	715 F.3d 1157 (9th Cir. 2013).	32
	<i>Rodriguez v. West Publishing Corp.</i> ,	
	563 F.3d 948 (9th Cir. 2009)	32
	<i>Wal-Mart Stores Inc. v. Dukes</i> ,	
	131 S. Ct. 2541 (2011).....	17
	Statutes	
	42 U.S.C. §§ 12101 <i>et seq.</i>	5, 6
	Americans with Disabilities Act	5, 6

1	California Civil Code § 54.56.....	16, 20
2	California Civil Code §§ 51 <i>et seq.</i>	5, 6, 11, 21
3	California Civil Code §§ 54-54.3.....	5, 6, 11, 22
4	Class Action Fairness Act.....	15
5	Rules	
6	Federal Rule of Civil Procedure 23	18, 25
7	Federal Rule of Civil Procedure 23(a)	1, 4, 16
8	Federal Rule of Civil Procedure 23(a)(1)	16
9	Federal Rule of Civil Procedure 23(a)(2)	17
10	Federal Rule of Civil Procedure 23(a)(3).	18
11	Federal Rule of Civil Procedure 23(b)(2)	15
12	Federal Rule of Civil Procedure 23(b)(3)	1, 4, 12, 15, 20, 21
13	Federal Rule of Civil Procedure 12(b)(6)	6
14	Federal Rule of Civil Procedure 23(e)	22, 25
15	Federal Rule of Civil Procedure 23(e)(2)	23
16	Genearl Order 56.....	6
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on July 30, 2014 or as soon thereafter as the matter may be heard, Plaintiffs and Defendants Redbox Automated Retail, LLC and Save Mart Supermarkets (hereafter “the Parties”) will jointly move the Court for (i) preliminary approval of the proposed class settlement agreement (“the Agreement”) submitted herewith and incorporated herein by reference in the above-captioned matter, (ii) for an order certifying the proposed settlement class under Federal Rule of Civil Procedure 23(a) and b(3) , (iii) an order directing notice to the proposed settlement class and an opportunity to opt out of the damages settlement; (iv) for a scheduling order setting deadlines for objections and opt-outs and setting a fairness hearing, and (v) for final approval of the Agreement following a fairness hearing.

In support of this motion, the Parties state:

1. The Agreement represents a comprehensive settlement of the issues raised in the above-captioned case.
2. The parties believe that the Agreement offers a fair and equitable result to those affected by it.
3. The parties believe that the Agreement will result in significant long-term benefits both for individuals who are members of the proposed settlement class and for Defendants.

RELIEF SOUGHT

The parties respectfully request that the Court enter the attached proposed order:

1. Conditionally certifying a settlement class for injunctive and monetary relief;
2. Granting preliminary approval of the Agreement so that the Parties may proceed with notice to the class and to a fairness hearing for final approval of the Agreement;
3. Directing the proposed form of notice to the settlement class; and
4. Setting a schedule for notice to the class, objections, and a fairness hearing for final approval.

POINTS AND AUTHORITIES

I. INTRODUCTION

This lawsuit and the proposed class settlement agreement address barriers alleged by the Lighthouse for the Blind and Visually Impaired (“Lighthouse”) and other legally blind and visually-impaired customers involving the goods and services of Redbox video-rental kiosks found in defendant Save Mart Supermarkets (“Save Mart”) grocery stores and other locations throughout California. The settlement agreement, attached as Exhibit 1, is the product of thorough, arms-length negotiations, substantial exchanges of information among the parties to determine the most technically feasible relief for the class, and six in-person mediation sessions over the course of nearly two years (three mediation sessions with JAMS mediator Catherine Yanni and additional three mediation sessions with former California Court of Appeal Justice James R. Lambden). The agreement results in significant injunctive relief that will provide accessibility solutions for all kiosks in California, damages to be paid to the class, and payment of attorneys’ fees and costs. The settling parties request an Order from the Court determining that the settlement is fair and reasonable.

While Defendants Redbox and Save Mart Supermarkets deny liability, Redbox has agreed to modifications that will result in the undisputed ability for legally blind persons to independently browse, select, pay for, and return movies or other media at Redbox kiosks. Under the agreement, Redbox will add headphone jacks, tactile controls, and audio output to all of Redbox kiosks in California to make them accessible to legally blind persons.

Redbox is currently providing legally blind persons with access to its video rental services through telephone customer assistance. By calling this customer assistance number, consumers who cannot use the visual-interface will be helped by a customer service agent who can remotely browse, select, and vend videos or games. This customer assistance number will be in place at least until Redbox completes the agreed-upon modifications to its kiosks in California.

Redbox is also making certain changes to redbox.com to improve accessibility of the website.

The settlement process presented both novel legal questions, such as the coverage of Redbox kiosks under state and federal accessibility statutes, and complex factual determinations, such as the feasibility of the accessibility solutions proposed by Plaintiffs. The parties arrived at the proposed agreement after several full-day mediation sessions, multiple meetings between Plaintiffs' technical consultant and Redbox's engineers, significant sharing of information and relevant documents, and the exchange of several written proposals. While Defendants have denied liability, they acknowledge the risks presented by litigating Plaintiffs' claims and contesting Plaintiffs' arguments in protracted litigation.

The agreement is conditioned upon certification of the proposed class made up of:

All Legally Blind individuals who, due to the visual interface utilized at the Redbox Kiosks located in California, have attempted but were unable to access the products or services available at Redbox Kiosks located in California, or were deterred from accessing those products or services at the Redbox Kiosks in California, between January 12, 2010 and the end of the claims period to be set by the Court. "Legally Blind" individuals include all persons with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200 in the better eye, or they have a visual field limitation such that the widest diameter of the visual field, in the better eye, subtends an angle no greater than 20 degrees, as measured with a Goldmann III4e or equivalent size stimulus. Some people who meet this definition have limited vision. Others have no vision.¹

¹ The proposed settlement class is coextensive with the class proposed in the Complaint. As explained herein, the parties have stipulated to a settlement class that explicitly includes legally blind individuals who have been deterred from accessing the services of Redbox kiosks in California due to the exclusively visual interface utilized by the kiosks.

The parties stipulate that certification of the proposed class under Federal Rules of Civil Procedure 23(a) and (b)(3) is appropriate for settlement purposes. It is undisputed that all Redbox kiosks in California use a uniformly-designed, visual user interface that is alleged to be inaccessible for independent use by legally blind persons. An accessibility fix to the uniform design resolves barriers alleged at all Redbox kiosks throughout the state. Plaintiffs believe that common issues predominate and Defendants will not contest predominance here because of the risks inherent in litigating novel questions of disability access on a class-wide basis. By the same token, Plaintiffs contend that the determination of damages for individual class members is simple, as they have all been affected by the same barriers, with the same result. The parties agree that a certified settlement class and the streamlined claims process described herein is a far superior method of adjudicating class member claims for statutory damages since numerous individual damages lawsuits would burden the courts and, in practice, many of the members of the proposed class have no alternate means to prosecute claims on their own.

By virtue of the Parties' arm's length negotiations, the critical benefits extended to the class, and the avoidance of protracted and unnecessary litigation, this settlement is fair, adequate, and reasonable. Accordingly, the Parties respectfully request: (1) certification of the proposed class under Federal Rules of Civil Procedure 23(a) and 23(b)(3); (2) preliminary approval of the settlement agreement; (3) an order approving notice to the class of the settlement agreement, the claims process and opt out procedures and setting a fairness hearing; and (4) final approval of this agreement at the time of the fairness hearing. The Parties' counsel have negotiated the foregoing and agree to the form and content.

II. THE PARTIES

The Lighthouse for the Blind and Visually Impaired (hereafter "the Lighthouse"), a non-profit corporation, is one of California's oldest organizations serving the blind and visually impaired community. The Lighthouse is dedicated to aiding blind and visually impaired individuals in leading productive, enriching, and independent lives. To further its mission, the Lighthouse offers members of the blind and visually impaired community employment counseling, orientational mobility training, and training to access a variety of recreational

activities, including film. Individual plaintiffs Lisamaria Martinez, Josh Saunders, Shana Ray, Angela Griffith, and Jennifer Westbrook are legally blind residents of California who allege that they attempted to rent movies at Redbox kiosks in Save Mart Supermarkets located in California.

Redbox operates the nation's leading video rental service through a network of automated, self-service video rental kiosks. Redbox kiosks offer customers a convenient and affordable way to rent DVDs, Blu-ray discs, and video games. Redbox is a low-cost video rental provider, with the price of a DVD rental at \$1.20 per night. Redbox has several thousand Redbox kiosks in California. Redbox kiosks are located at Save Mart Supermarkets and many other retailers throughout the State.

Save Mart is a privately held company based in Modesto, California. Save Mart operates more than two hundred supermarkets in California under the brand names Lucky, Save Mart, and FoodMaxx. Redbox kiosks are located on the premises of some Save Mart Supermarkets in California.

III. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS

The Lighthouse and several individual Plaintiffs brought this action on behalf of a class of legally blind persons in California. Plaintiffs allege that Redbox denies Plaintiffs full and equal access to the video rental services available at Redbox kiosks, and that Save Mart denies Plaintiffs full and equal access to the services, privileges, advantages, accommodations of Redbox kiosks located in Save Mart Stores. Plaintiffs allege violations of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, and the California Disabled Persons Act, California Civil Code §§ 54-54.3. Plaintiffs seek injunctive and declaratory relief under Plaintiffs ADA and Unruh Act claims. Plaintiffs also seek statutory damages under their state law claims in an amount ranging from \$1,000 to \$4,000 for each occasion wherein a member of the putative class allegedly encountered access barriers when attempting to access a Redbox kiosk in California. Defendants have denied and continue to deny liability under the state and federal statutes at issue, and have raised issues regarding the applicability of the relevant laws to Redbox kiosks and to Save Mart, as well as factual issues regarding the nature of the appropriate relief, if any.

1 **A. Pre-Litigation Stage and Initial Litigation**

2 On November 9, 2011, prior to initiating the litigation, Plaintiffs notified Redbox and
3 Save Mart that Plaintiffs were unable to access the goods and services at Redbox kiosks. The
4 parties were unable to resolve Plaintiffs' concerns, and Plaintiffs initiated this litigation.

5 On January 12, 2012, Plaintiffs filed this action in federal court in San Francisco. The
6 complaint alleged violations of the ADA, 42 U.S.C. §§ 12101 *et seq.*, the Unruh Act, California
7 Civil Code §§ 51 *et seq.*, and the Disabled Persons Act, California Civil Code §§ 54-54.3. On
8 April 16, 2012, Save Mart filed a motion to dismiss for failure to state a claim upon which relief
9 may be granted. Plaintiffs opposed the motion. On May 18, 2012, this Court issued an order
10 denying Save Mart's motion to dismiss. Dkt. No. 28. The Court, however, denied the order
11 because it did not believe the motion was appropriate as Rule 12(b)(6) motion, indicated it
12 believed Save Mart's argument might have merit, and ordered that the issue of Save Mart's
13 liability be briefed early, after discovery on the issue.

14 The parties then began discovery, exchanging initial disclosures and written discovery
15 requests. Plaintiffs served comprehensive discovery requests and defendants objected to the
16 scope of the requests. On July 9, 2012, however, the parties stayed the litigation so that they
17 could pursue mediation pursuant to General Order 56.

18 **B. Settlement Negotiations**

19 The parties utilized the Court's General Order 56 procedures to engage in a joint
20 inspection of a typical Redbox kiosk and participate in mediation with JAMS mediator Catherine
21 Yanni. Following that first mediation session, the parties agreed to continue to pursue
22 settlement, focusing their negotiations first on possible accessibility solutions for the Redbox
23 kiosks to resolve Plaintiffs' claims for injunctive relief. The parties then engaged in extensive
24 settlement negotiations over a period of eighteen months, including three rounds of mediation
25 with Ms. Yanni as mediator, multiple meetings and conference calls between counsel and the
26 Parties' technical consultants on both sides and several exchanges of written proposals. These
27 negotiations were extensive because the parties needed to explore a variety of technical issues
28 related to the capabilities of the software and hardware contained in Redbox kiosks and the

1 feasibility of adding the accessibility features that Plaintiffs believed would be needed to provide
2 them with equal access to the kiosks.

3 After reaching agreement on a resolution of Plaintiffs' injunctive relief claims, the parties
4 engaged in negotiations to resolve damages for the proposed class and named plaintiffs followed
5 by a negotiation of reasonable attorneys' fees and costs. The parties reached an agreement on
6 these provisions after three mediation sessions with former California Court of Appeal Justice
7 James R Lambden as mediator, including post-mediation session support from Justice Lambden,
8 and multiple exchanges of written proposals.

9 The parties have been represented by competent and experienced counsel throughout
10 these negotiations. Plaintiffs have been represented by Disability Rights Advocates and the Law
11 Offices of Jay Koslofsky. Plaintiffs' counsel have extensive expertise in class action and
12 disability rights litigation. (*See* Declaration of Stuart Seaborn in Support of Joint Motion for
13 Preliminary Approval of Settlement ("Seaborn Decl.") ¶¶ 3–7); *see also Gray v Golden Gate*
14 *National Recreation Area*, 279 F.R.D. 501 (N.D. Cal. 2011); *Nat'l Fed'n of the Blind v. Target,*
15 *Corp.*, 582 F. Supp. 2d 1185, 1202 (N.D. Cal. 2007). Perkins Coie, which has extensive
16 experience in defending corporate clients in class action litigation, has ably represented Redbox
17 and Save Mart.

18 **IV. SUMMARY OF THE SETTLEMENT**

19 The proposed settlement agreement includes the following terms.

20 **A. Modifications to Redbox Kiosks in California and Redbox's Website**

21 Redbox agrees to equip all existing Redbox kiosks in California with a nonvisual user
22 interface that Plaintiffs can use to independently browse, select, pay for, and return media from
23 Redbox kiosks. The nonvisual user interface will consist of a standard headphone jack, a tactile
24 keypad, and text-to-speech output that will read the text and controls on the screen aloud.
25 Redbox will continue to meet and confer with Plaintiffs regarding the design of the nonvisual
26 user interface and provide Plaintiffs the opportunity to review and approve a functional prototype
27 before deploying the prototype. Redbox will also ensure that for the term of the agreement, all
28

1 new Redbox kiosks deployed in California are equipped with the nonvisual user interface
2 described above.

3 Redbox will begin installing the nonvisual user interface on Redbox kiosks no later than
4 eighteen months after final approval of this agreement, with some limited exceptions provided if
5 there is an appeal that could impact the nature of the hardware modifications Redbox needs to
6 make to the kiosks under the terms of the Agreement. Redbox would complete rolling out the
7 nonvisual user interface at all Redbox kiosks in California within thirty months of final approval
8 of this agreement or within eighteen months of the resolution of any appeal of final approval,
9 whichever is longer.

10 Redbox will also make certain accessibility improvements to redbox.com to ensure that
11 Plaintiffs using screen reading technology can independently register, browse movies, browse
12 kiosk locations, and reserve movies for pick-up. Redbox will complete these modifications to
13 redbox.com within eighteen months of final approval of this agreement. This timeline will
14 ensure that accessibility improvements to redbox.com are in place by the time that Redbox
15 begins to roll out the nonvisual user interface at Redbox kiosks in California. Redbox will
16 maintain these accessibility improvements on redbox.com for the term of the agreement.

17 **B. Remote Customer Assistance**

18 To provide Plaintiffs with access to the services at Redbox kiosks in California while the
19 modifications described above are being developed and deployed, Redbox will continue to
20 maintain a customer service phone line whereby Redbox customer service agents can remotely
21 assist settlement class members with browsing, renting, paying for, and returning movies or other
22 media from Redbox kiosks by remotely operating the kiosks. Redbox will offer this phone line
23 until Redbox completes installation of the nonvisual user interface at all Redbox kiosks in
24 California. Once these modifications are complete, Plaintiff Lighthouse will maintain, for the
25 remainder of the term of this Agreement and at its own expense, a toll-free telephone number
26 that will allow class members to report questions, concerns, or complaints regarding the
27 nonvisual user interfaces on Redbox kiosks in California. Plaintiff Lighthouse will use a portion
28

1 of the payment it receives for monitoring compliance with the agreement as described below to
2 fund this service.

3 **C. Monitoring Compliance with the Agreement**

4 The Lighthouse will monitor Defendant Redbox's compliance with the portions of the
5 Agreement covering the modifications to Redbox kiosks in California and redbox.com.

6 After modifications are made to the kiosks in California, the Lighthouse will conduct user
7 testing by legally blind persons, testing up to 1% of the modified kiosks, and, beginning after the
8 first 25% of kiosks are equipped with the accessibility modifications, the Lighthouse will report
9 to Redbox on a quarterly basis the results of its user testing. After the first twelve months, user
10 testing will occur every six months for the term of the agreement. The blind users will test the
11 nonvisual user interface on each kiosk by attempting to browse, rent, pay for, pick-up, and return
12 media at the kiosks using the tactile keypads and headphone jacks on the retrofitted kiosks.

13 After modifications are made to redbox.com, the Lighthouse will conduct user testing of
14 the site by legally-blind persons and will provide quarterly reports to Redbox regarding the
15 results of its user testing. After the first twelve months, user testing will occur every six months
16 for the term of the agreement. The legally-blind users will test redbox.com by attempting to
17 register for an account on redbox.com, independently search for Redbox kiosk locations, and
18 independently browse and reserve movies and other media available for rent at Redbox kiosks
19 utilizing screen-reading technology.

20 Redbox will pay the Lighthouse \$85,000 for this monitoring.

21 **D. Responding to Complaints from Blind and Visually Impaired Customers**

22 Within eighteen months of the effective date of this agreement, Redbox shall make
23 reasonable and diligent efforts to provide legally blind customers with a method of reporting any
24 problems with the nonvisual user interfaces on Redbox kiosks or with Redbox.com. The
25 methods of reporting may include, but are not limited to, Redbox allowing customers to report
26 any problems with the nonvisual user interface via Redbox's remote customer assistance line, or
27 a web-based or e-mail method for customers using Redbox.com to report problems with any of
28 the accessibility modifications made to Redbox.com.

1 **E. Duration of Agreement**

2 The parties agreed that the Agreement will have a duration of forty-two months starting
3 at the time this Courts' Final Approval of the Agreement is no longer subject to appeal. The
4 parties request that this Court maintain continuing jurisdiction throughout the term of the
5 Agreement and that, if necessary, this Court appoint a United States magistrate judge to oversee
6 enforcement of the agreement during that period.

7 **F. Damages Settlement Fund**

8 Redbox has agreed to contribute \$1,200,000 into a settlement fund that will be used to
9 pay valid claims submitted by members of the settlement class. Redbox will deposit these funds
10 into an interest-bearing account within forty-five (45) days of the effective date of the agreement.
11 Claims will be processed and the funds will be distributed within forty-five days of the end of the
12 claims period. The claims period will last for ninety days after the date notice is disseminated.
13 Interest earned by the account will also go to the settlement class.

14 The parties agreed that Kurtzman Carson, LLC ("KCC"), a firm with experience
15 administering over 1500 class action settlements, will serve as the claims administrator. The
16 claims administrator will be retained to process and validate submitted claims forms, and to
17 distribute funds pursuant to the proposed agreement. Redbox will cover the costs of claims
18 administration up to \$25,000. Plaintiffs will cover any reasonable claims administration costs
19 beyond \$25,000.

20 To submit a claim, eligible members of the damages subclass will be required to submit a
21 claim form, executed under penalty of perjury, setting forth, among other things, (i) the class
22 member's name and address; (ii) confirmation that the class member is legally blind; and (iii)
23 confirmation that the class member attempted to access a Redbox kiosk in California but was
24 unable to because of the visual interface or had actual knowledge of the visual interface used by
25 Redbox kiosks in California and was, as a result, deterred from accessing the goods and services
26 of the Redbox kiosks in California on a particular occasion within the claims period. Claims
27 may be submitted on-line through a settlement website established for the purpose of
28

1 administering the settlement agreement or by mail directly to KCC. Class Counsel and KCC
2 will provide notice to the settlement class and instructions regarding the claims procedure.

3 The \$1.2 million damages fund will be shared pro rata among each settlement class
4 member who timely submits a valid claim form, but in no event will any claimant be entitled to
5 more than \$4,000 for a valid claim. If the class claims exceed \$1,200,000 plus accrued interest,
6 the amount paid per claimant will be reduced pro rata so that the total amount paid from the fund
7 does not exceed \$1,200,000 plus accrued interest. Each class member may submit only one
8 claim.

9 The agreed-upon class damages fund of \$1,200,000 represents a fair and reasonable
10 compromise resulting from arm's length negotiations. It provides the possibility of significant
11 relief for class members while taking into consideration the risks of pursuing damages claims
12 through additional litigation. The California statutes offer prevailing plaintiffs statutory
13 minimum damages of \$1,000 per incident (under the Disabled Persons Act) or \$4,000 per
14 incident (under the Unruh Act). While the class size may be difficult to estimate, the parties
15 expect a range of roughly 300 to 1,200 claimants, resulting in a recovery range of \$1,000 per
16 eligible claimant (representative of the statutory damages amount available under the Disabled
17 Persons Act) if there are 1,200 claimants to a maximum of \$4,000 per claimant (representative of
18 the statutory damages amount available under the Unruh Act) if there are 300 claimants.

19 Though in some cases it may be possible for individual plaintiffs who prevail after
20 litigating damages claims to recover above this \$4,000 maximum based on allegations of
21 multiple incidents, such claims would require significant use of resources and the possibility of
22 securing such relief through litigation is uncertain. Indeed, the parties dispute the standard of
23 proof required under the Unruh Act and likelihood of success of Plaintiffs' Unruh claims if the
24 parties were to continue to litigate this case. However, the parties agree that the amount of
25 statutory damages in the Agreement is an appropriate and reasonable compromise in the context
26 of settlement and in light of the risks and costs associated with further litigation. Such
27 compromises are routinely approved in class action settlements. *See, e.g., In Vandervort v.*
28

1 *Balboa Capital Corp.*, --- F. Supp. 2d ----, 2014 WL 1274049, at *4 (C.D. Cal. March 27, 2014)
2 (approving a settlement for less than the amount of statutory damages under the TCPA).

3 If the total dollar amount that is distributed to class members totals less than \$1,200,000
4 plus accrued interest, or if any portion of the damages fund remains unpaid for 400 days after the
5 claims administrator has mailed checks to class members, the remainder of the settlement fund
6 will be directed to the Paul Longmore Institute on Disability at San Francisco State University
7 (“the Longmore Institute”) as a *cy pres* beneficiary. The Longmore Institute promotes new
8 forms of teaching, scholarship, artistic creation for the disability community, including the blind
9 community. Its projects include a disability film festival and several other cultural, recreational,
10 and art programs where members of the blind community participate and benefit. Its mission
11 and work are therefore directly linked to the interests of the class and the underlying civil rights
12 at issue in the litigation, making it an appropriate *cy pres* beneficiary. *See Lane v. Facebook,*
13 *Inc.*, 696 F.3d 811, 820 (9th Cir. 2012) (quoting *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036
14 (9th Cir.2011) (A *cy pres* remedy must account “for the nature of the Plaintiffs’ lawsuit, the
15 objectives of the underlying statutes, and the interests of the silent class members[.]”). For more
16 information about the Longmore Institute, visit [http://longmoreinstitute.sfsu.edu/pages/about-](http://longmoreinstitute.sfsu.edu/pages/about-institute)
17 [institute](http://longmoreinstitute.sfsu.edu/pages/about-institute). There will be no reversion of funds to Redbox.

18 **G. Opt-Out Right**

19 If this Court grants the joint motion to certify a settlement class under Rule 23(b)(3), any
20 potential settlement class members, except for the named Plaintiffs, will have the right and an
21 additional opportunity to optout of the class for purposes of monetary relief. The parties will
22 accept requests to opt out of the monetary settlement that are received by the Claims
23 Administrator within ninety (90) days of the Notice Deadline that is set by the court. The parties
24 agreed upon form language and content for opt-out requests, which is reflected in §12 of the
25 settlement agreement, and that opt-out requests that are not made in the agreed upon language
26 may be reviewed by the Court upon the request of either party, if the parties are unable to resolve
27 the matter on their own or with the assistance of Justice Lambden.
28

1 **H. Notice**

2 If this proposed agreement is preliminarily approved and the proposed settlement class is
3 certified, the parties will initiate notice to the settlement class in the manner approved by this
4 Court within fourteen (14) days of the Court's order preliminarily approving the agreement. The
5 notice to class members will describe the agreement, inform them of their right to object to the
6 agreement, inform them of their right to opt out of the damages portion of the agreement, and
7 will describe the prerequisites for recovering damages from the claims fund with plain-language
8 instructions. The notice disseminated to members of the settlement class will include the Long
9 Form Notice of Class Settlement (attached as Exhibit C to the Settlement Agreement) and the
10 Short Form Notice of Class Settlement (attached as Exhibit D to the Settlement Agreement).

11 Plaintiffs and Class Counsel have conducted extensive research and investigation to
12 determine the most effective methods of reaching members of the proposed settlement class in
13 light of the blind community's lack of access to traditional print media. (*See* Seaborn Decl. ¶ 12.)
14 Plaintiffs have identified a series of organizations, list-serves, and publications targeting the
15 blind community in California. (*Id.*) Those organizations, list-serves, and publications and the
16 procedures for disseminating the notice are discussed in Section V.C below.

17 **I. Release of Injunctive and Damages Claims**

18 In exchange for the injunctive relief described in this proposed agreement, Plaintiffs and
19 the Settlement Class agree to release any injunctive relief claims against Redbox and Save Mart
20 relating to the subject matter of the litigation. The release will apply to claims that arose between
21 January 12, 2010 and the effective date of the settlement agreement.

22 In exchange for the damages relief described in the proposed agreement, Plaintiffs and
23 the Settlement Class also agree to release all damages claims of the California class against
24 Redbox and Save Mart relating to the subject matter of the litigation. The damages release will
25 apply to any potential claims of the named Plaintiffs and members of the Settlement Class who
26 chose not to opt out of the agreement. The release will apply to any claims for damages under
27 California State access law that arose between January 12, 2010 through the last day of the
28 Claims Period (which is also the last day to opt out of the damages portion of the agreement).

1 The released claims are coextensive with the claims set out in the complaint.

2 **J. Payment to Named Plaintiffs**

3 Redbox will also make a payment of \$10,000 to each of the following named Plaintiffs
4 within forty-five (45) days of the effective date of the agreement: Angela Griffith, Lisamaria
5 Martinez, Joshua Saunders, Shana Ray, and Jennifer Westbrook. These payments are service
6 awards based on the extensive efforts the named plaintiffs provided over the course of nearly
7 three years, including their efforts during the initial investigation, the period of active litigation,
8 and the prolonged settlement discussions. Many of the Named Plaintiffs participated in the six
9 in-person mediation sessions, advocating for injunctive relief on behalf of the class and
10 providing valuable insight into accessibility solutions for the blind community. (See Seaborn
11 Decl. ¶13, Martinez Decl. ¶¶ 7-9, Saunders Decl. ¶¶ 7-9, Ray Decl. ¶¶ 7-9.) The accessibility
12 improvements that will result from the settlement would not have been possible without their
13 active participation.

14 **K. Dispute Resolution Process**

15 Enforcement of this agreement will be subject to continuing jurisdiction of the Court. The
16 parties request that this Court appoint a United States magistrate judge in the Northern District of
17 California for overseeing enforcement of the Agreement upon final approval of the agreement or
18 other such time as the Court deems necessary. Prior to seeking court enforcement, the parties
19 will meet and confer to discuss and resolve any dispute that arises regarding compliance with the
20 agreement. If, within thirty (30) days, the parties are still unable to resolve the dispute through
21 the meet-and-confer process, they have the option to engage in mediation. If the parties are
22 unable to resolve the dispute within thirty (30) days through the meet and confer process or if the
23 parties opt to use mediation and are unable to resolve the dispute within sixty (60) days, the issue
24 may be presented to the assigned magistrate judge, who will have the authority to enforce the
25 agreement.

26 **L. Attorneys' Fees and Costs**

27 Redbox will pay a total of \$800,000 for Plaintiffs' reasonable attorneys' fees and costs.
28 This compensation includes: (1) \$610,000 in attorneys' fees for work on the matter through

February, 20, 2014, (2) \$80,000 in attorneys fees’ for work on obtaining approval of the proposed settlement agreement, (3) \$75,000 in attorneys’ fees for monitoring of the agreement for the term of the agreement, and (4) \$35,000 in costs. As a part of the parties’ arm’s length negotiations, the parties did not negotiate attorneys’ fees until after negotiating relief for the settlement class. The attorneys’ fees amount is the result of an agreed-upon compromise, utilizing a lodestar calculation with reductions based on billing judgment as a starting point. Additionally, none of the agreed-upon attorneys’ fees or costs come out of the class damages fund.

Class counsel will file its motion for reasonable attorneys’ fees and costs at least fourteen (14) days before the deadline for objecting to the settlement agreement and will provide instructions for accessing the motion in the notice to the class.

M. Class Action Fairness Act Compliance

Redbox and Save Mart will provide information concerning the settlement to the U.S. Department of Justice and the Attorney General for the State of California within ten (10) days of filing of this motion pursuant to the Class Action Fairness Act (“CAFA”).

V. LEGAL ARGUMENT

A. Certifying the Class Is Appropriate Under FRCP 23(a) and (b)(3)²

The parties have stipulated to the certification at the time of the fairness hearing of a settlement class defined as follows:

All legally blind individuals who, due to the visual interface utilized at the Redbox Kiosks located in California, have attempted but were unable to access the products or services available at Redbox Kiosks located in California, or were deterred from accessing those products or services at the Redbox Kiosks in California, between January 12, 2010 and the end of claims period to be set by the Court. Legally blind individuals include all persons with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200 in the better eye, or they have a visual

² The parties propose certification of the class under FRCP 23(b)(3). Please note, however, that, if the court prefers, the parties are open to certifying the settlement class as a hybrid FRCP 23(b)(2) and (b)(3) class, where the injunctive relief claims would be certified under FRCP 23(b)(2) and the statutory damages claims would be certified under FRCP 23(b)(3), since the real world effect of such an approach would be the same as certifying the class under FRCP 23(b)(3) only.

field limitation such that the widest diameter of the visual field, in the better eye, subtends an angle no greater than 20 degrees, as measured with a Goldmann III4e or equivalent size stimulus. Some people who meet this definition have limited vision. Others have no vision.

The proposed class is coextensive with the proposed class set out in the Complaint, which included all legally blind persons who have been or are being denied access to Redbox kiosks in California. However, the parties have clarified that the class includes legally blind persons who were deterred from accessing the products or services of Redbox Kiosks in California, since such persons also have standing to allege a denial of access to Redbox kiosks. *See Arnold v. United Artists Theatre Circuit, Inc.*, 866 F. Supp. 433, 438–39 (N.D. Cal. 1994); Calif. Civ. Code § 54.56.

1. The Proposed Class Meets the Numerosity, Commonality, Typicality, and Adequate Representation Requirements of Rule 23(a)

Plaintiffs assert, and Defendants do not contest for purposes of settlement, that the proposed class satisfies the four threshold requirements for class certification under Rule 23(a). These requirements are (1) numerosity of potential class members; (2) commonality of factual and legal issues among class members; (3) typicality of the class representatives' claims; and (4) adequate representation of class wide interests by representatives and Class Counsel. Without conceding these requirements and for the purpose of effectuating this settlement, Defendants stipulate to certification of the proposed class for purposes of settlement.

a. The Proposed Class Satisfies the Numerosity Requirement

A class meets the numerosity requirement if the class is so large that joinder of all members would be impracticable. Fed. R. Civ. Proc. 23(a)(1); *see Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (certifying class of 262 individuals); *Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F. Supp. 282 (N.D. Cal. 1980), *aff'd*, 649 F.2d 531 (9th Cir. 1982) (certifying class of 184 identified potential class members). Here, approximately 150,000 blind individuals reside in California, and other blind individuals regularly visit California. (*See Seaborn Decl.* ¶ 14, Exh. A.) Plaintiffs submit that many of these individuals have reason to rent movies, whether to watch the movies themselves or with friends and family.

There are over four thousand Redbox kiosks deployed throughout California, including those located at Save Mart stores. Thus, the number of legally blind individuals who might have used Redbox kiosks in California to rent movies or other media, but were deterred from doing so due to the exclusively visual interface utilized by the Redbox kiosks, or who have actually attempted to access the services of Redbox kiosks in California since January 10, 2010 is easily in the hundreds and could be in the thousands.

b. The Proposed Class Satisfies the Commonality Requirement

Rule 23(a)(2) requires that there exist “questions of law or fact common to the class.” The Ninth Circuit construes this requirement permissively. “All questions of fact and law need not be common to satisfy the rule.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). “[A]ll that Rule 23(a)(2) requires is ‘a single significant question of law or fact.’” *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952, 957 (9th Cir. 2012) (quoting *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir.2012)); *see also Evon*, 688 F.3d at 1029 (commonality requirement met when question of liability on claims made by class members was “capable of determination in one stroke”). Moreover, in civil rights, suits commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.2001), *abrogated on other grounds as recognized by Harris v. Alvarado*, No. 08-16860, 2010 WL 4296636, at *1 (9th Cir. Oct. 28, 2010).

Here, the alleged access violations are system-wide and uniform across the entire fleet of Redbox kiosks throughout California. The parties agree that all Redbox kiosks in California utilize a common interface. All of the kiosks use the same exclusively visual interface and that interface affects all legally blind customers in a consistent way. The determination of whether or not the customer interface on the Redbox kiosks complies with state and federal disability laws will not vary from location to location or even kiosk-to-kiosk. Both the finding of liability and the determination of relief for the class are therefore, capable of determination in one stroke. *See Evon*, 688 F.3d at 1029 (quoting *Wal-Mart Stores Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)).

c. The Class Representatives Here Meet the Typicality Requirement

1 The named class representatives also have claims that are typical of the class. *See* Fed. R.
2 Civ. Proc. 23(a)(3). “The test of typicality ‘is whether other members have the same or similar
3 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
4 whether other class members have been injured by the same course of conduct.’” *Evon*, 688 F.3d
5 at 1030 (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992)); *see also*
6 *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036, 1042 (9th Cir. 2012) (quoting
7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.1998) (representative claims are typical
8 if they are “reasonably co-extensive with those of absent class members; they need not be
9 substantially identical.”)).

10 Here, the proposed class representatives, Angela Griffith, Lisamaria Martinez, Joshua
11 Saunders, Shana Ray and Jennifer Westbrook all have the same disability as the other members
12 of the class—all are legally blind—and have alleged the same injury as other members of the
13 class due to the same conduct – *e.g.* they have all been denied or deterred from accessing the
14 services of the Redbox kiosks due to the visual customer interface used by the kiosks. (*See*
15 *Generally*, Declarations of Angela Griffith, Lisamaria Martinez, Joshua Saunders, and Jennifer
16 Westbrook.). All of the class representatives therefore have claims that are coextensive with the
17 claims of the overall settlement class and satisfy the typicality requirements of Rule 23.

18 ***d. Class Representatives and Experienced Class Counsel Here***
19 ***Easily Meet the Adequacy Requirement***

20 Finally, the representative parties will fairly and adequately protect the interests of the
21 class. To satisfy this requirement, the Named Plaintiffs and Class Counsel must not have
22 conflicts of interest with the proposed class, and the class must be represented by qualified
23 counsel. *Evon*, 688 F.3d at 1031. No conflict exists between the Named Plaintiffs and the
24 proposed settlement class here nor does any conflict exist within the settlement class with regard
25 to relief. All named Plaintiffs and other class members seek the same relief, access to the media-
26 rental services available at Redbox kiosks in California. The injunctive relief that the proposed
27 agreement authorizes would provide all members of the class, including the proposed class
28 representatives, with full and equal access to media-rental services at all Redbox kiosks

1 throughout California. This agreement may be the first class-action settlement to secure access
2 modifications for blind persons to interactive, touch-screen, retail kiosks operated by a private
3 company on a statewide basis.

4 In addition, class counsel has served as class counsel in scores of disability rights cases
5 across the Country.³ In this matter, class counsel has vigorously pursued relief on behalf of the
6 class, initially through litigation and then through extensive, arm's length settlement negotiations
7 with Defendants. *See Hanlon*, 150 F.3d at 1021 (vigorous representation measured by
8 "competency of counsel and . . . an assessment of the rationale for not pursuing further
9 litigation"). Based on class counsel's extensive experience litigating access to public
10 accommodations, this settlement agreement is a success in providing blind individuals with
11 independent access to interactive kiosks. The impact of the agreement demonstrates that further
12 litigation was not necessary to remedy the class claims. In addition, attempting to reach a
13 resolution through additional litigation could have taken years and, due to the novel nature of the
14 claims, might not have yielded a resolution as favorable as that contained in the proposed
15 settlement.

16 2. The Proposed Class is Also Sufficiently Ascertainable

17 In this circuit, ascertainability is satisfied if the class definition describes a set of common
18 characteristics sufficient to allow a prospective plaintiff to identify himself or herself as having a
19 right to recover based on that description. *Lanovaz v. Twinings North America, Inc.*, 2014 WL
20 1652338, at *2–3 (N.D. Cal. April 24, 2014), (citing *McCrary v The Elations Co., LLC*, 2014
21 U.S. Dist. LEXIS 8443, at *25 (C.D. Cal. Jan. 13, 2014)); *see also Astiana v Kashi Co.*, 291
22 F.R.D. 493, 500 (S.D. Cal. 2013). Here, Plaintiffs submit, and Defendants do not contest for the
23 purposes of settlement, that membership in the class can be determined by a short list of common
24 characteristics. Class members must be legally blind and, due to the exclusively visual user
25 interface at Redbox kiosks, have unsuccessfully attempted to access the services of a Redbox
26 kiosk since January 12, 2010 or been deterred from attempting to access those services since
27

28 ³ *See* Seaborn Decl. ¶¶ 3–7.

January 12, 2010.⁴ Plaintiffs contend that the test for determining whether a legally blind person falls in the latter category is simple: that person needs to have been aware of the barriers presented by the kiosks’ visual interfaces and, as a result of knowledge of such barriers, did not attempt to access the services available at a kiosk on a particular occasion. Such a determination requires no complex calculations. In the context of settlement and the claims process, it simply requires testimony under penalty of perjury confirming affirmative answers to a short set of questions. Given the risks inherent in litigation and the common design of the Redbox kiosks, Defendants do not contest these points for the purpose of settlement.

3. The Proposed Class Meets the Requirements of Rule 23(b)(3)

Under Rule 23(b)(3), certification is appropriate where common questions of law and fact “predominate over any questions affecting only individual members, and [where] a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that manageability of trial is therefore irrelevant. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 618-20 (1997).

a. ***Common Questions of Law and Fact Predominate in the Claims of the Proposed Class***

Plaintiffs submit and Defendants do not contest for the purposes of settlement that common questions predominate here. Plaintiffs’ claims will “prevail or fail in unison.” *Abdullah*, 731 F.3d at 964, 967 (Affirming certification under Rule 23(b)(3) of class of employees because common issues predominated where plaintiffs’ theory of liability concerning breaks depended on employer’s uniform single-employee staffing model and where all worksites were identical); *see also In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation*, 722 F.3d 838, 859 (6th Cir. 2013) (affirming certification of class of purchasers of

⁴ The disability discrimination statutes provide legal standing to persons with disabilities who become aware of barriers at a place of public accommodation and are deterred from accessing the services of that place of public accommodation due to those barriers regardless of whether they have actually experienced the barriers at issue. *See Arnold v. United Artists Theatre Circuit, Inc.*, 866 F. Supp. 433, 438–39 (N.D. Cal. 1994); Calif. Civ. Code §54.56.

1 various washing machine models under Rule 23(b)(3) where design flaws had common impacts
2 on class members despite differences in washing machine usage across class members).

3 Here, all members of the proposed class are legally blind and submit they have faced the
4 same common design barrier that has impacted them in the same way, regardless of where in
5 California they encountered a Redbox kiosk. The individual Plaintiffs and all members of the
6 proposed class seek the same injunctive remedy, a set of modifications to Redbox kiosks that
7 would enable them to independently access the kiosks. Additionally, all class members have
8 damages claims that turn on the same issue and all seek the same damages remedy—minimum
9 statutory damages under California’s disability discrimination statutes—making such claims
10 particularly appropriate for certification under Rule 23(b)(3). *See Target*, 582 F. Supp. 2d at
11 1203 (characterizing, in the context of class certification, the complexity of individual damages
12 determinations under the statutory minimum damages framework of the Unruh Act and the DPA
13 as “relatively minor” and finding such claims appropriate for certification under Rule 23(b)(3));
14 *Botosan v. Paul McNally Realty*, 216 F.3d 827, 834–35 (9th Cir. 2000) (proof of actual damages
15 not required for recovery of statutory damages under the Unruh Civil Rights Act).

16 ***b. Resolving the Claims of the Proposed Class on a Class-Wide***
17 ***Basis Is Superior to Other Methods of Adjudicating the***
18 ***Controversy, and Many Members of the Proposed Class Are***
Unlikely to Obtain Relief Absent a Class-Wide Resolution of
Their Claims

19 Adjudicating the claims of the proposed class through a single action is superior to the
20 available alternatives. The superiority analysis requires “a comparative evaluation of alternative
21 mechanisms of dispute resolution” and “determination of whether the objectives of the particular
22 class action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023.
23 Courts consider four factors in the superiority analysis: (1) the class members interests in
24 controlling the litigation, (2) the nature of the litigation, (3) the desirability of concentrating
25 litigation, and (4) the manageability of the claims. Fed. R. Civ. P. 23(b)(3).

26 The proposed class here satisfies the objectives of the 23(b)(3) class by efficiently
27 resolving a large set of similar claims. *Hanlon*, 150 F.3d at 1023 (holding that 23(b)(3) class was
28 superior to alternative of numerous individual actions that would burden courts and would be

uneconomic for many class members). The proposed settlement will provide all class members with full and equal access to Redbox kiosks in California within a reasonable timeframe. In addition, the proposed resolution of the damages claims involves a streamlined claims procedure that would provide redress to aggrieved class members. The alternative method to adjudicate these claims would be to burden the courts with numerous individual lawsuits. In practice, however, many members of the proposed class have no alternative to a class resolution of their claims because they do not have the means to secure legal counsel to prosecute individual claims against Redbox and Save Mart.

Resolving claims of the proposed class in a class-wide settlement is also superior to the alternatives because it is more manageable. *Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 515 (9th Cir.2013) (holding that manageability favored class-wide adjudication of claims even where individual damages determinations were necessary). The proposed settlement resolves the injunctive relief claims of the class in one stroke by modifying the uniform kiosk design and applying that modification statewide. The settlement also sets up a simplified claims procedure that will efficiently resolve the damages claims of the proposed class without the need for further adjudication. In contrast, the alternative of numerous individual cases would involve duplicative efforts by the courts and may lead to complications if different courts interpret the state and federal disability laws differently.

B. Preliminarily Approving the Proposed Settlement Agreement Is Appropriate

Federal Rule of Civil Procedure 23(e) conditions the settlement of any class action on court approval. *Hanlon*, 150 F.3d at 1025. Preliminary approval of a settlement allows the parties to efficiently determine whether the proposed settlement is “within the range of possible approval[.]” *Horton v. Merrill Lynch*, 855 F. Supp. 825, 827 (E.D.N.C. 1994) (quoting *Armstrong v. Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980) (outlining role of preliminary approval in overall approval process)). A court may probe the parties’ consensual agreement only “to ensure that it is ‘fair, adequate, and free from collusion.’” *Lane*, 696 F.3d at 819 (Quoting *Hanlon*, 150 F.3d at 1027). In addition, there is an initial presumption of fairness when, as here, “a proposed class settlement was negotiated at arm’s length by counsel for the

class.” *Murillo v. Texas A&M Univ. Sys.*, 921 F. Supp. 443, 445 (S.D. Tex. 1996). Courts consider several factors when determining whether the settlement is “fundamentally fair, adequate, and reasonable,” including (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of the class members to the proposed settlement. Fed. R. Civ. P. 23(e)(2); *Lane*, 696 F.3d at 819 (endorsing factors set forth in *Hanlon*, 150 F.3d at 1026).

Here, the proposed settlement agreement is fundamentally fair, adequate, and reasonable. Without exception, the agreement will provide class members with the injunctive relief that they seek: equal access to Redbox’s video rental services via a uniform set of modifications to all Redbox kiosks throughout the State. Redbox has agreed to modify all its kiosks in California on a reasonable timeline, provide access to Redbox kiosks during the interim modification period through remote customer assistance, and modify redbox.com so that class members can browse and reserve movies using the website. These accessibility modifications are well-researched and based on industry models for providing blind persons with access to ATMs and other self-service kiosks. The agreement further provides for monitoring and a complaint hotline to ensure that modifications are maintained and kept functional for blind customers throughout the state.

Plaintiffs hope that this settlement will demonstrate that businesses interacting with customers using modern technology can make their services accessible to people with disabilities, and thus serve as a model for the business community.

Additionally, all parties have concluded that the settlement is appropriate after weighing the benefits of this agreement against the risks of proceeding to trial, the costs of continuing the litigation, and the delay in resolving the claims that continued litigation would entail. The parties’ extensive settlement discussions, which included the use of consultants with expertise in accessible technology, multiple exchanges of information, and six mediation sessions over the course of nearly two years, have provided them with ample information with which to evaluate

1 the settlement agreement. (*See* Seaborn Decl. ¶ 8.) For example, the parties exchanged
2 information concerning the hardware and software in Redbox kiosks, the types of nonvisual
3 accessibility features that can be used to make the kiosks accessible, technology used at other
4 accessible interactive self-service kiosks, Defendants’ business practices, and demographic
5 information concerning blind consumers in California. (*Id.*) Taking account of this information,
6 the parties concluded that the mutually-agreed-upon modifications to the Redbox kiosks as well
7 as the agreed-upon compensation will provide relief for the class while resolving disputed issues
8 in an efficient and timely manner.

9 In contrast, additional litigation would cause uncertainty and delay for all parties. The
10 complicated factual and legal issues in the case will require extensive use of resources at trial,
11 including the use of multiple experts. Each side contends that it would ultimately prevail after
12 continued and likely prolonged litigation, but both parties agree that the risks presented by this
13 case are significant.

14 Furthermore, counsel experienced in class action litigation crafted the proposed
15 agreement. Class counsel are well-qualified litigators with specialized expertise in the area of
16 major class actions to improve physical access to public accommodations, including class actions
17 involving access improved access to technology for the blind community. (*See* Seaborn Decl. ¶¶
18 3–7.) In addition, counsel for Defendants possesses substantial experience defending corporate
19 clients against class actions. Counsel on both sides view this agreement as a successful
20 compromise that will resolve class members’ claims in a fair and efficient manner.

21 Finally, negotiation of this agreement was thorough and conducted at arm’s length. The
22 parties extensively discussed an array of methods to provide blind persons with access to Redbox
23 kiosks. The parties attended several full-day mediation sessions and exchanged several versions
24 of the settlement agreement before arriving at language and remedies that all parties found
25 acceptable. Class representatives attended all of the full-day mediation sessions and participated
26 extensively in settlement negotiations. (*See* Martinez Decl. ¶¶ 7-10, Saunders Decl. ¶¶ 7-10.)
27 The Plaintiffs and Class representatives have reviewed the terms of the settlement agreement and
28 fully support it. (*Id.*) The fact that the parties negotiated an agreement on the injunctive relief

1 before negotiating Plaintiffs’ attorneys’ fees and costs also demonstrates a lack of collusion
2 between the parties.

3 **C. The Court Should Direct Distribution of the Notice of Settlement**

4 Federal Rule of Civil Procedure 23(e) instructs the Court to direct notice in a reasonable
5 manner to all class members who would be bound by the proposals. Notice must be the “best
6 practicable under the circumstances.” *See Peters v. National R.R. Passengers Corp.*, 966 F.3d
7 1483, 1486 (D.C. Cir. 1992); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314
8 (1950). Here, the parties have agreed upon a form of notice to the class and methods to
9 disseminate the notice that more than satisfy the requirements of Rule 23. The Long Form Notice
10 covers the key components of the settlement, including the scope and timeline of the injunctive
11 relief and monitoring, opt-out procedures, the process, prerequisites, and time limits required for
12 recovering damages from the claims fund, and procedures for objections and participating in the
13 Fairness Hearing. The Long Form Notice also provides instructions for class members on
14 accessing other materials relevant to settlement, including the full text of the Agreement and
15 Plaintiffs’ motion for reasonable fees and costs, among other relevant documents, as well as a
16 link to a website designed to provide further information to class members about the settlement
17 and allow class members to submit online claims or opt-out notifications. The parties have also
18 agreed to disseminate a Short Form Notice providing a plain language description of the
19 settlement agreement and instructions for the claims process, including opt-out procedures.

20 Class counsel conducted an extensive investigation into the most effective and efficient
21 methods for distributing notice of the settlement agreement to class members throughout the
22 state in light of the fact that traditional forms of distribution of notice of class action settlement,
23 including publication in major print newspapers, are less likely to be effective in the blind
24 community. Class counsel identified and the parties have agreed upon the methods described
25 below, which are targeted to reach a maximum number of class members in a timely way, within
26 reasonable costs.

27 This Notice shall be distributed as follows:
28

- 1 a) Class Counsel and Defendants shall ensure that the Notice and Claims Notice
2 shall be posted on the Settlement Website for a period of 90 days. The Settlement
3 website shall contain instructions for completing Claims Forms.
- 4 b) Defendants shall provide the Notice to any person that has complained to Redbox
5 or Save Mart about the accessibility of the Kiosks in California for the blind or
6 visually impaired, if any, and to the extent Redbox or Save Mart is reasonably
7 aware of such complaint and has either an email address or mailing address for
8 such person(s). If Redbox or Save Mart has an email address for any person
9 requiring notice under this Section, the Notice shall be provided by email in an
10 accessible electronic format, which are electronic formats, including Microsoft
11 Word Documents, properly formatted PDF files, RTF files, and text files, that can
12 be read using screen reading technology. If Redbox or Save Mart has a mailing
13 address for anyone requiring notice under this Section, the mailing addresses for
14 these individuals shall be provided to Class Counsel, and Class Counsel shall mail
15 to each individual through U.S. mail hard copies of the Notice in an alternate
16 accessible format. For purposes of this Section “alternate accessible format”
17 refers to Braille documents, large print documents, audio recordings, or other
18 formats that legally blind individuals can independently read.
- 19 c) Class Counsel shall post the Notice and Claims Notice on the website of
20 Disability Rights Advocates for a period of 90 days;
- 21 d) Class counsel shall electronically mail the Notice to the following email list
22 serves, which exist to provide information relevant to blind Californians: [nfbc-](mailto:nfbc-info@nfbnet.org)
23 info@nfbnet.org, cabs-talk@nfbnet.org, and the California Council of the Blind’s
24 email list serve.
- 25 e) Class Counsel shall electronically mail the Notice to the following organizations
26 serving blind persons in California:

27 Lions Center for the Blind
28 2115 Broadway
Oakland, CA 94612
Phone: (510) 450-1580

1 Website: <http://www.lbcenter.org/>

2 Vista Center for the Blind and Visually Impaired

2470 El Camino Real, Suite 107

3 Palo Alto, CA 94306

4 Phone: (650) 858-0202

Toll-Free phone: (800) 660-2009

5 Fax: 650-858-0214

Website: <http://www.vistacenter.org/>

6 Santa Clara Valley Blind Center

7 101 North Bascom Avenue

8 San Jose, CA 95128

Phone: 408-295-4016

9 Fax: 408-295-1398

Website: www.visionbeyondsight.org

10 San Francisco - Independent Living Resource Center San Francisco (ILRC-SF)

11 649 Mission Street, 3rd Floor, San Francisco, CA 94105

12 Phone: (415) 543-6222

Fax: (415) 543-6318

13 Website: <http://www.ilrcsf.org/>

14 Santa Clara Valley Blind Center

101 North Bascom Avenue

15 San Jose, CA 95128

Tel: 408-295-4016

16 Fax: 408-295-1398

Website: www.visionbeyondsight.org

17 San Jose - Silicon Valley Independent Living Center (SVILC)

18 2202 N. First Street, San Jose, CA 95131

19 Phone: (408) 894-9041

Fax: (408) 894-9050

20 TDD: (408) 894-9012

Website: <http://www.svilc.org/>

21 San Mateo - Center for Independence of Individuals with Disabilities (CID)

22 1515 South El Camino, Suite 400, San Mateo, CA 94402

23 Phone: (650) 645-1780

Fax: (650) 645-1785

24 Website: <http://www.cidsanmateo.org/>

25 East Bay Center for the Blind

2928 Adeline Street

26 Berkeley, CA 94703-2503

27 Phone: (510) 843-6935

Fax: (510) 843-6006

28 Website: <http://eastbaycenterfortheblind.org/>

1 The Hatlen Center for the Blind
2430 Road 20 #B112
2 San Pablo, CA 94806-3704
3 Phone: (510) 234-4984
4 Fax: (510) 234-4986
5 Website: <http://www.hcblind.org/about/>

6 California Department of Rehabilitation: Orientation Center for the Blind
400 Adams Street
7 Albany, CA 94706
8 Phone: (510) 559-1208
9 Website URL: <http://www.dor.ca.gov/OCB/index.html>

10 Berkeley - Center for Independent Living (CIL)
3075 Adeline Street, Ste. 100, Berkeley, CA 94703
11 Phone: (510) 841-4776
12 Fax: (510) 841-6168
13 Website: <http://www.cilberkeley.org/>

14 Concord - Independent Living Resources of Solano & Contra Costa Counties (ILR)
1850 Gateway Blvd., Suite 120, Concord, CA 94520
15 Phone: (925) 363-7293
16 Fax: (925) 363-7296
17 Website: <http://www.ilrsc.org/>

18 Hayward - Community Resources for Independent Living (CRIL)
439 A Street, Hayward, CA 94541
19 Phone: (510) 881-5743
20 Fax: (510) 881-1593
21 Website: <http://crilhayward.org/>

22 Marin Center for Independent Living (MCIL)
710 Fourth Street, San Rafael, CA 94901
23 Phone: (415) 459-6245
24 Fax: (415) 459-7047
25 Website: <http://www.marincil.org/>

26 Society for the Blind
1238 S Street
Sacramento, CA 95811
27 Phone: (916) 452-8271
28 Fax: (916) 492-2483.
Website: <http://www.societyfortheblind.org>

Blind & Visually Impaired Center of Monterey County
225 Laurel Avenue
Pacific Grove, CA 93950
Local Telephone: (831) 649-3505
Toll Free Telephone: (800) 404-3505
Website: <http://www.blindandlowvision.org>

1 California School for the Blind
2 500 Walnut Avenue
3 Fremont, CA 94536
4 Phone: (510) 794-3800
5 Website: <http://www.csb-cde.ca.gov>

6 Community Center for the Blind
7 130 West Flora Street
8 Stockton, CA 95202
9 Phone: (209) 466-3836
10 Website: <http://www.communitycenterfortheblind.org/>

11 Chico: Independent Living Services of Northern California (ILSNC)
12 The Jennifer Roberts Building
13 1161 East Avenue
14 Chico, CA 95926
15 Phone: (800) 464-8527
16 Fax: (530) 893-8574
17 VP/TTY: (530) 893-8527
18 Website: <http://ilsnc.org/>

19 Santa Rosa - Disability Services & Legal Center (DSLC)
20 521 Mendocino Ave, Santa Rosa, CA 95401
21 Phone: (707) 528-2745
22 Fax: (707) 528-9477
23 TTY: (707) 528-2151
24 Website: <http://www.disabilityserviceandlegal.org/>

25 Center for the Blind & Visually Impaired
26 1124 Baker Street
27 Bakersfield, CA 93305
28 Local Telephone: (661) 322-5234
Website: www.cbvi.org

Auburn - Placer Independent Resource Services (PIRS)
11768 Atwood Road, Suite 29, Auburn, CA 95603
Phone: (530) 885-6100
Fax: (530) 885-3032
Website: <http://www.pirs.org/>

Bakersfield - Independent Living Center of Kern County (ILCKC)
5251 Office Park Drive, Ste. 200 Bakersfield, CA 93309
Phone: (661) 325-1063
Fax: (661) 325-6702
Website: <http://www.ilcofkerncounty.org/>

Fresno - Resources for Independence, Central Valley (RICV)
3008 North Fresno Street, Fresno, CA 93703
Phone: (559) 221-2330

1 Fax: (559) 221-2340
2 TTY: (559) 221-2342
3 Website: <http://www.ricv.org/>

4 Salinas - Central Coast Center for Independent Living (CCCIL)
5 318 Cayuga St. Suite 208
6 Salinas, CA 93901
7 Phone: (831) 757-2968
8 Fax: (831) 757-5549
9 TTY: (831) 757-3949
10 Website: <http://www.cccil.org/>

11 San Diego Center for the Blind and Vision Impaired
12 5922 El Cajon Boulevard
13 San Diego, CA 92115
14 Phone: (619) 583-1542
15 <http://www.sdcdb.org/>

16 Braille Institute of America
17 741 North Vermont Avenue
18 Los Angeles, CA 90029
19 Local Telephone: (323) 663-1111
20 Toll Free Telephone: (800) 272-4553
21 Website: <http://www.brailleinstitute.org>

22 Claremont - Services Center for Independent Living (SCIL)
23 107 Spring Street, Claremont, CA 91711
24 Phone: (909) 621-6722
25 Fax: (909) 445-0727
26 Website: <http://scil-ilc.org/>

27 Downey - Southern California Rehabilitation Services (SCRS)
28 7830 Quill Drive, Suite D, Downey, CA 90242
Phone: (562) 862-6531
Fax: (562) 923-5274
Website: <http://scrs-ilc.org/>

Garden Grove - Dayle McIntosh Center (DMC)
13272 Garden Grove Blvd., Garden Grove, CA 92843
Phone: (714) 621-3300
Fax: (714) 663-2094
Website: <http://www.daylemc.org/>

Long Beach - Disabled Resource Center (DRC)
2750 East Spring Street, #100, Long Beach, CA 90806-2249
Phone: (562) 427-1000
Fax: (562) 427-2027
Website: <http://www.drcinc.org/>

Riverside - Community Access Center (CAC)

1 6848 Magnolia Avenue, Suite 150, Riverside, CA 92506
Phone: (951) 274-0358
2 Fax: (951) 274-0833
3 TTY: (951) 274-0834
Website: <http://www.ilcac.org/>

4 San Bernardino - Rolling Start, Inc. (RSI)
5 570 West 4th Street, Suite 107, San Bernardino, CA 92401
Phone: (909) 884-2129
6 Fax: (909) 386-7446
TDD: (909) 884-7396
7 Website: <http://www.rollingstart.org/contact.html>

8 San Diego - Access to Independence San Diego (A2iSD)
9 8885 Rio San Diego Drive, Ste. 131
San Diego, CA 92108
10 Phone: (619) 293-3500
Fax: (619) 293-3508
11 TDD: (619) 293-7757
Website: <http://www.rehab.cahwnet.gov/ILS/ILC-A2iSD.html>

12 Santa Barbara - Independent Living Resource Center (ILRC)
13 423 West Victoria Street, Santa Barbara, CA 93101
Phone: (805) 963-0595
14 Fax: (805) 963-1350
15 Website: <http://www.ilrc-trico.org/>

16 Junior Blind of America
5300 Angeles Vista Boulevard
17 Los Angeles, CA 90043
Local Telephone: (323) 295-4555
18 Website: <http://www.juniorblind.org/site/>

19 Guide Dogs for the Blind
20 350 Los Ranchitos Road,
San Rafael, CA 94903
21 Tel: (415) 499-4000
Fax: (415) 499-403
22 Website: <http://www.guidedogs.com/site/PageServer>

23 Guide Dogs of the Desert
60740 Dillon Road
24 Whitewater, CA 92282
Phone: (760) 329-6257 or (888) 883-0022
25 Fax: (760) 329-2866
26 Website: <http://guidedogsofthedesert.org/contact.html>

27 Guide Dogs of America
13445 Glenoaks Boulevard
28 Sylmar, CA 9134

1 Phone: (818) 362-5834
Fax: (818) 362-6870
2 Website: <http://www.guidedogsofamerica.org/>
3 Matilda Ziegler Magazine for the Blind
4 Email: Editor@matildaziegler.com
Website: <http://www.matildaziegler.com/about/>
5 AFB AccessWorld Magazine
6 Email: lhuffman@afb.net
7 Website: http://www.afb.org/aw/contact_aw.asp

8 Additionally, the claims administrator, KCC LLC, which has successfully managed
9 thousands of class-action settlement agreements, will collect and process any opt-out statements
10 and will receive and process damages claims. The claims administrator will submit copies of
11 any opt-out statements it receives to the parties and the Court. The claims administrator will also
12 submit a report to the parties at the end of the claims administration process detailing the results
13 of the claims administration process.

14 **D. The Service Award Payments to Class Representatives are Justified and Reasonable**

15 Service awards based on the efforts expended by class representatives are discretionary,
16 intended to compensate class representatives for work done on behalf of the class, to make up for
17 financial or reputational risk in bringing the action, and sometimes, to recognize their willingness
18 to act as a private attorney general. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59
19 (9th Cir. 2009). The parties recognize that the courts review such payments to determine
20 whether they destroy the adequacy of the class representatives. *See Radcliffe v. Experian Info.*
21 *Solutions*, 715 F.3d 1157, 1163 (9th Cir. 2013). However, courts in this circuit routinely award
22 reasonable service awards where class representatives have actively participated in securing
23 reasonable relief for the class. *See Bolton v. U.S. Nursing Corp.*, 2013 WL 5700403, at *6 (N.D.
24 Cal. Oct. 18, 2013) (\$10,000 incentive award to class representative approved where average
25 settlement recovery estimated to be \$595.91 and class representative had assisted throughout the
26 litigation and was prepared to be deposed in support of the case); *Glass v. UBS Financial*
27 *Services, Inc.*, 2007 WL 221862, at *16–17 (N.D. Cal. Jan. 26, 2007) (\$25,000 enhancement
28 approved for four class representatives, despite objections, where class counsel provided

1 declaration attesting that named plaintiffs provided a great deal of informal discovery to class
2 counsel and a great deal of insight into the policies and practices of defendant.)); *Nwabueze v.*
3 *AT&T, Inc.* 2013 WL 6199596, at *11–12 (N.D. Cal. Nov. 27, 2013) (incentive payment of
4 \$5,000 found to be presumptively reasonable where class representatives exhibited a willingness
5 to participate and undertake the responsibilities and risks attendant with bringing a representative
6 action.)

7 Here, the class representatives not only exhibited a willingness to participate and
8 undertake the responsibilities of a class action, they actively participated in all stages of the case
9 for nearly three years, including participation in numerous mediation sessions, hands-on testing
10 and feedback regarding possible accessibility solutions, among other efforts that resulted in
11 highly-effective advocacy on behalf of the class. (*See* Seaborn Decl. ¶¶13, Martinez Decl. ¶¶ 6-
12 11, Saunders Decl. ¶¶ 6-11, Ray Decl. ¶¶ 6-11.) Additionally, the class representatives spent
13 more than a year negotiating an injunctive fix to the accessibility barriers at Redbox kiosks and
14 secured an agreement on such relief before negotiating any payment for themselves. (Seaborn
15 Decl. ¶¶ 8,13 Martinez Decl. ¶¶ 7, 9.) The \$10,000 service payment to the class representatives
16 is therefore reasonable and justified in light of the efforts they have expended to secure the best
17 practicable relief for the class.

18 **E. The Court Should Approve the Proposed Scheduling Order**

19 The parties are submitting with this motion a proposed scheduling order setting forth
20 proposed dates for issuance of the notices, deadlines for objections and opt-outs, deadlines for
21 claims submission, a date for the fairness hearing to determine final approval of the agreement,
22 and related orders and deadlines. The parties request that the Court enter this proposed order
23 with such changes as the Court deems appropriate.

24 **VI. CONCLUSION**

25 The proposed settlement will benefit legally blind Californians and Plaintiffs hope that it
26 will serve as an example for the retail industry to help ensure companies include accessibility
27 features for blind users as they move towards a self-service business model. It is a fair,
28 reasonable, and adequate settlement of the claims at issue. The parties therefore request that the

1 Court issue preliminary approval of the proposed settlement class, issue preliminary approval of
2 the proposed agreement, approve the proposed notices, and issue the proposed scheduling order,
3 including setting a date for a fairness hearing.

4
5
6 Dated: June 26, 2014

DISABILITY RIGHTS ADVOCATES
LAW OFFICES OF JAY KOSLOFSKY

7
8 /s/

Stuart Seaborn
Attorneys for Plaintiffs

9
10 Dated: June 26, 2014

PERKINS COIE, LLP

11 /s/

Sue J. Stott
Amanda J. Beane
Attorneys for Defendants

EXHIBIT 1

STUART SEABORN (CA BAR NO. 198590)
MICHAEL NUNEZ (CA BAR NO. 280535)
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, California 94704-1204
Telephone: (510) 665-8644
Facsimile: (510) 665-8511
TTY: (510) 665-8716
Email: general@dralegal.org

JAY KOSLOFSKY (CA BAR NO. 97024)
Law Offices of Jay Koslofsky
P.O. Box 9236
Berkeley, CA 94709
Tel: (510) 280-5627
Fax: (510) 845-3707
Attorneys for Plaintiffs

(additional attorneys listed on next page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LIGHTHOUSE FOR THE BLIND AND
VISUALLY IMPAIRED, on behalf of itself
and all others similarly situated, ANGELA
GRIFFITH, on behalf of herself and all others
similarly situated, LISAMARIA MARTINEZ,
on behalf of herself and all others similarly
situated, JOSH SAUNDERS, on behalf of
himself and all others similarly situated,
SHANA RAY, on behalf of herself and all
others similarly situated, AND JENNIFER
WESTBROOK, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

REDBOX AUTOMATED RETAIL, LLC,
AND SAVE MART SUPERMARKETS,

Defendants.

Case No. C12-00195 PJH

**CLASS SETTLEMENT AGREEMENT
AND RELEASE**

Judge: Hon. Phyllis J. Hamilton

SUE S. STOTT, CA Bar No. 91144
SStott@perkinscoie.com
PERKINS COIE LLP
Four Embarcadero Center Suite 2400
San Francisco, CA 94111-4131
Telephone: (415) 344-7000
Facsimile: (415) 344-7050

AMANDA J. BEANE (*Pro Hac Vice*)
ABeane@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000

Attorneys for Defendants
Redbox Automated Retail, LLC and
Save Mart Supermarkets

1. Introduction and Recitals

1.1 This Settlement Agreement (together with all exhibits, the “Agreement”) is entered into by and between Redbox Automated Retail, LLC (“Redbox”) and Save Mart Supermarkets (“Save Mart”) and The Lighthouse for the Blind and Visually Impaired (“The Lighthouse”), Angela Griffith, Lisamaria Martinez, Josh Saunders, Shana Ray, and Jennifer Westbrook (collectively, the “Individual Named Plaintiffs”) (together, The Lighthouse and the Individual Named Plaintiffs are the “Named Plaintiffs”), individually and on behalf of themselves and a class of persons similarly situated. Redbox, Save Mart, and the Named Plaintiffs (individually and on behalf of the Settlement Class, defined herein) shall each be referred to as a “Party” and shall jointly be referred to as “Parties.”

1.2 Named Plaintiffs filed a class action complaint against Redbox and Save Mart in United States District Court for the Northern District of California on January 12, 2012 (the “Lawsuit”). The Lawsuit was assigned the civil action number C12-00195 and was assigned to the Honorable Phyllis J. Hamilton.

1.3 Named Plaintiffs alleged that Redbox Kiosks, some of which appear in Save Mart stores, violated the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, the Disabled Persons Act, California Civil Code §§ 54 *et seq.*, and the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, in that they were not independently accessible to persons who are blind or visually-impaired. The Named Plaintiffs sought injunctive and monetary relief.

1.4 Defendants Redbox and Save Mart have denied and continue to deny the Named Plaintiffs’ claims and any liability.

1.5 The Parties have engaged in multiple mediation sessions and settlement negotiations over the course of nearly two years, including multiple in-person meetings and the involvement of technology experts. The Named Plaintiffs and Class Counsel believe that their

claims have substantial merit and that they would meet the standards for class certification. Defendants have asserted various defenses, including the extent to which Save Mart is a proper party and the extent to which the asserted laws apply to Redbox Kiosks. Defendants also have asserted that the claims are inappropriate for class certification. Both parties, however, have considered that ultimate outcome on the merits is uncertain, and have considered the length and expense of continued proceedings without settlement.

1.6 The Parties therefore now wish to effect a complete resolution and settlement of all claims and controversies relating to the allegations of the Named Plaintiffs and the Settlement Class, and to resolve their differences and disputes by settling the Lawsuit. For purposes of this Agreement, Defendants stipulate to the definition of the Settlement Class, to the Named Plaintiffs serving as Class Representatives, and to Class Counsel serving as counsel to the Class. The Named Plaintiffs and Class Counsel acknowledge that they desire to settle on the terms and provisions in this Agreement and believe it is fair, reasonable, and adequate and in the best interests of the Named Representatives and the Settlement Class.

1.7 The terms of all Exhibits attached hereto are fully incorporated into this Agreement and are an integral part thereof. The terms of this Agreement, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. To the extent that there are any conflicts or inconsistencies between the terms of this Agreement and any of the Exhibits, the terms of this Agreement shall control.

2. **No Admission of Liability.** By agreeing to and voluntarily entering into this Agreement, there is no admission or concession by Redbox or Save Mart, direct or indirect, express or implied, that either has violated the Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*, the Disabled Persons Act, California Civil Code §§ 54 *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §§ 12181 *et seq.*, or any other federal, state, or local law, regulation, order, or rule.

3. **Definitions.** In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below.

3.1 “Alternative Text” means a textual description of the content and function of a non-textual element on an Internet webpage that screen reading technology can perceive. Non-textual elements of Internet webpages include, but are not limited to, graphics, graphical links, and buttons.

3.2 “Claims Administrator” means Kurtzman Carson LLC (“KCC”) and its employees, and agents, which was selected by the Parties to administer and process claims in accordance with Sections 10-11 herein.

3.3 “Claims Form” means the form attached as Exhibit A or materially identical thereto.

3.4 “Claims Form Instructions” means the form attached as Exhibit B or materially identical thereto.

3.5 “Class Counsel” means Disability Rights Advocates and the Law Offices of Jay Koslofsky.

3.6 “Claims Period” means ninety (90) days from the deadline for notice to the Settlement Class in accordance with Section 10 herein and which will be set by the Court as part of the Preliminary Approval and Scheduling Order.

3.7 “Court” means the U.S. District Court for the Northern District of California.

3.8 “Cy Pres Fund” means any amount remaining in the Damages Fund after the payments described in Section 11.5-11.8 below.

3.9 “Dispute Resolution” means the process described in Section 13 herein.

3.10 “Effective Date” means the date by which all of the following have occurred:

- a. The Parties have executed the Settlement Agreement.
- b. The Parties have submitted to the Court and the Court has entered the following: (a) the Preliminary Approval and Scheduling Order, and (b) the Judgment and Order of Final Approval; and
- c. The Judgment has become final and is no longer subject to appeal or review, with the exception that the injunctive relief to the Settlement Class under Section 7 of this Agreement shall become effective pursuant to the terms of paragraph 7.3.

3.11 “Eligible Claimant” means a Settlement Class Member who has a Valid Claim and who does not opt out from the monetary portion of this Agreement.

3.12 “Fairness Hearing” means a hearing held by the Court before Final Approval and after Notice, the Claims Period, the deadline to object and opt-out, and any responses to any objections have been filed with the Court.

3.13 “Final Approval” means the approval of this Agreement by a United States District Court judge under Federal Rule of Civil Procedure 23(e) after Notice to the Settlement Class and a Fairness Hearing.

3.14 “Kiosk” means a Redbox-branded automated kiosk that dispenses standard format DVDs, Blu-ray discs, or video games.

3.15 “Legally Blind” individuals include all persons with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200 in the better eye, or they have a visual field limitation such that the widest diameter of the visual field, in the better eye, subtends an angle no greater than 20

degrees, as measured with a Goldmann III4e or equivalent size stimulus. Some people who meet this definition have limited vision. Others have no vision.

3.16 “Media” means any product available for rent at a Redbox-branded Kiosk, including standard format DVDs, Blu-ray discs, or video games.

3.17 “Notice” means notice of this agreement as provided in Section 10 herein, including Notice to the Settlement Class regarding the terms of this Settlement Agreement, attached as Exhibits C (the Long Form Notice) and D (the Short Form Notice) or materially identical thereto, and opt out, objection and claims procedures pursuant to Sections 10-12 herein.

3.18 “Preliminary Approval” means the initial approval by the Court of the terms of this agreement, which shall occur prior to any Notice being provided to the Settlement Class in accordance with Section 10 herein. A draft Proposed Order Granting Motion for Preliminary Approval of Class Settlement; Certifying Settlement Class; Directing Issuance of Settlement Notice; and Scheduling Hearing on Final Approval is attached as Exhibit E.

3.19 “Redbox” means Redbox Automated Retail, LLC, and any of its directors, officers, employees, partners, principals, agents, shareholders, attorneys, accountants, auditors, advisors, consultants, personal or legal representatives, tenants, households, predecessors, successors, parents, subsidiaries, affiliates, divisions, heirs, assigns, or related or affiliated entities of Redbox Automated Retail, LLC.

3.20 “Save Mart” means Save Mart Supermarkets, and any of its directors, officers, employees, partners, principals, agents, shareholders, attorneys, accountants, auditors, advisors, consultants, personal or legal representatives, tenants, households, predecessors, successors, parents, subsidiaries, affiliates, divisions, heirs, assigns, or related or affiliated entities of Save Mart Supermarkets.

3.21 “Settlement Class” means all Legally Blind individuals who, due to the visual interface utilized at the Redbox Kiosks located in California, attempted but were unable to access the products or services available at Redbox Kiosks located in California or were deterred from accessing those products or services at the Redbox Kiosks in California, between January 12, 2010 and the end of the Claims Period.

3.22 “Settlement Class Member” means any member of the Settlement Class.

3.23 “Settlement Website” means the website created by the claims administrator for the purpose of administering this agreement. This website shall contain information for class members relating to the proposed settlement and claims process as well as a mechanism for on-line submission of claim forms or requests to opt out for purposes of participation in the monetary portion of the settlement.

3.24 “Valid Claim” means that a Legally Blind individual in California, between January 12, 2010 and the end of the Claims Period, attempted to access the goods and services offered at Redbox Kiosks but was unable to because of the visual interface, or had actual knowledge of the visual interface utilized by the Redbox Kiosks and, as a result, was deterred from accessing the goods and services at the Redbox Kiosk on a particular occasion, provided that such attempt and/or incident is documented in a Claim Form that is signed and timely submitted in accordance with Section 11 herein.

4. **Conditions Precedent.** This Agreement shall be conditioned upon and shall be effective only upon the occurrence of all of the following events.

4.1 Class Counsel and Redbox have moved jointly for, and the Court has entered, an order granting Preliminary Approval of this Agreement.

4.2 Upon Preliminary Approval of this Agreement and approval of the Notice and the procedures for providing Notice, Notice has been provided to the Settlement Class in accordance with such procedures.

4.3 A Fairness Hearing has been held in accordance with Federal Rule of Civil Procedure 23(e)(2).

4.4 The Court has granted Final Approval of this Agreement, dismissed the claims of the Lawsuit in accordance with the terms set forth herein after a Fairness Hearing has been conducted (subject to the Court's retaining jurisdiction pursuant to Section 16 herein). All such orders and approvals have become final and non-appealable.

5. **Settlement Purposes Only.** This Agreement is for settlement purposes only. Neither the fact of, nor any term or provisions contained in, this Agreement or its exhibits, nor any action taken under it shall constitute, be construed as, or be admissible in evidence as (1) any admission of the validity of any claim or fact alleged by the Named Plaintiffs and Settlement Class in this Lawsuit or any other pending or subsequently filed action; (2) evidence of any wrongdoing, fault, violation of law, or liability of any kind by either Redbox or Save Mart; (3) an admission by either Redbox or Save Mart of any claim or allegation made in this Lawsuit or any action; nor (4) admission by the Named Plaintiffs, Settlement Class, or Class Counsel of the validity of any fact or defense asserted against them in the Lawsuit or any action.

6. **Term of Agreement.** This Agreement shall have a term ("Term") that expires forty-two (42) months after the Effective Date of the Agreement.

7. **Injunctive Relief to the Settlement Class**

7.1 Existing Redbox Kiosks. In accordance with the provisions in this Agreement, and for the purpose of making them accessible to Settlement Class Members, Redbox shall modify all Redbox Kiosks in the State of California as follows (hereafter the "Nonvisual User Interface").

7.1.1 Addition of a tactile keypad. Redbox will add a tactile keypad, which shall enable Settlement Class Members to navigate through and read the on-screen text

and interact with the on-screen controls that enable the browsing, renting, paying for, pick-up, and return of media without the use of the Kiosk's touchscreen or any other visual interface, and to control the volume and speed (except mid-sentence) of the text-to-speech output.

7.1.2 Addition of a headphone jack. Redbox will add a 3.5mm headphone jack that will autonomously detect a Kiosk's text-to-speech features when compatible headphones are connected to it. Redbox will not be responsible for providing compatible headphones to Settlement Class Members or other consumers; and

7.1.3 Addition of text-to-speech output. Redbox will add text-to-speech output, via audio through the headphone jack, to convey the text and controls necessary to browse, rent, pay for, pick-up, and return Media, including all textual synopsis of any Media, and to present any sales or discounts offered by Redbox with respect to Media that Redbox makes available to sighted customers at that Kiosk using its visual interface. Redbox is not required to add text-to-speech output for any advertising of third-party products and services which does not impact the price of the transaction at the time of the transaction. Third-party advertisements shall not interfere with a customer's ability to browse, rent, pay for, pick up, and return Media at the Kiosks using the Nonvisual User Interface.

7.2 Before developing a prototype, Redbox shall meet and confer with the Named Plaintiffs and Class Counsel to present Redbox's intended design of Nonvisual User Interface to the Named Plaintiffs and Class Counsel and to obtain their feedback on that design. On or before the earlier of the following two dates: (1) eighteen (18) months after Final Approval of this Agreement, or (2) within one (1) month after the functional prototype is complete, Redbox will present a functional prototype of the Nonvisual User Interface. Redbox must obtain the Named Plaintiffs' approval of the functional prototype of the Nonvisual User Interface for Redbox Kiosks before Redbox begins to modify any Kiosks in California pursuant to this Agreement. The Named Plaintiffs will not unreasonably withhold such approval. Any dispute

regarding the Nonvisual User Interface shall be subject to the dispute resolution process described in Section 13.

7.3 Redbox shall modify one Redbox Kiosk at each Kiosk location in California in accordance with Section 7 of this Agreement within twenty-four (24) months of Final Approval of this Agreement. Redbox shall modify all Redbox Kiosks in California in accordance with Section 7 of this Agreement within thirty (30) months of Final Approval of this Agreement. If there is an appeal of the Final Approval that specifically targets the injunctive relief, and Redbox in good faith believes that modifying the deadlines for implementing the injunctive relief is necessary in light of this appeal, Redbox shall be entitled to delay the processes and deadlines described in Sections 7.1, 7.2 and 7.3 until after the Effective Date, but will complete all of the modifications described in Section 7.1 at all Redbox Kiosks in California within eighteen (18) months of the Effective Date or within thirty (30) months of Final Approval, whichever is later.

7.4 New Redbox locations. Redbox shall ensure that, beginning three (3) months after the functional prototype referenced in Paragraph 7.2 is approved by Plaintiff, if any Redbox Kiosks are made available in California at new locations not otherwise covered by paragraph 7.3 and for use by members of the general public, those Redbox Kiosks shall possess the Nonvisual User Interface described in paragraph 7.1 that enables Settlement Class Members to independently rent, browse, pay for, return, and pick-up Media at Redbox Kiosks.

7.5 Redbox will make reasonable and diligent efforts to ensure that its customer assistance programs are prepared to assist blind or visually-impaired users with using the Nonvisual User Interface.

7.6 Accessibility of redbox.com. To improve the accessibility of redbox.com for Settlement Class Members, Redbox shall make the modifications to redbox.com as defined below: (1) if a captcha is used in the registration process, using a captcha that Settlement Class

Members can independently complete, (2) label any unlabeled or correct mislabeled links, graphical links, and buttons with Alternative Text descriptions, (3) altering the manner in which dynamic pop-up messages are presented so that screen reader technology can perceive and interact with those messages, (4) altering the color schemes on redbox.com, including the color schemes for links, menus, and pop-up messages, to increase text contrast and consistency, and (5) presenting movie titles in a manner that screen reading technology can perceive and that is separate from the movie cover art.

7.7 Redbox shall complete the above accessibility modifications to redbox.com pursuant to paragraph 7.6 of this Agreement within eighteen (18) months of Final Approval. Any dispute over the changes between Redbox and Plaintiffs shall be subject to the dispute resolution process of Section 13.

7.8 Within eighteen (18) months of Final Approval, Redbox shall make reasonable and diligent efforts to ensure that blind and visually-impaired customers have a method for reporting any problems with using the Nonvisual User Interface or redbox.com. These efforts may include but are not limited to Redbox allowing customers to report any problems with the Nonvisual User Interface via Redbox's remote customer assistance line (as discussed in Section 7.10) or a web-based or email method for customers using redbox.com to report problems with any of the accessibility modifications made to redbox.com pursuant to Section 7.6.

7.9 Redbox shall make reasonable efforts to provide Class Counsel with a schedule of proposed modifications to its Kiosks and modifications to redbox.com one (1) month prior to the first retrofit. The schedule shall include proposed dates and locations for scheduled implementation of the modifications throughout California. After Redbox provides this initial schedule, Redbox shall provide Class Counsel with updated schedules of proposed modifications to its Kiosks and modifications to redbox.com every three (3) months through the Term of this

Agreement. The schedules may be subject to change by Redbox, and Redbox will make reasonable efforts to notify Class Counsel of any such changes at reasonable intervals. Any schedule for proposed modifications to Redbox Kiosks that Redbox adopts shall comply with Section 7.3 of this Agreement. Redbox shall also provide Class Counsel with written updates describing any modifications to its Kiosks and redbox.com that have occurred pursuant to Sections 7.1-7.7 of this Agreement every three(3) months through the Term of this Agreement.

7.10 Remote Customer Service Assistance. To further ensure that Settlement Class Members will be able to use the services available at Redbox Kiosks, Redbox shall maintain its customer service phone line whereby Redbox customer service agents can remotely assist settlement class members with browsing, renting, paying for, and returning movies or other Media from Redbox Kiosks by remotely operating the Kiosks. Redbox shall offer this customer service phone line upon Final Approval of this Agreement, and Redbox shall operate this customer service phone line until the modifications defined in Section 7.1 are complete. Once the modifications described in Section 7.1 are complete, The Lighthouse may maintain, for the duration of the term of this Agreement, a toll-free telephone number that will allow class members to report questions, concerns, or complaints regarding the modifications described in Section 7.1 and their usability. The Lighthouse shall report questions, concerns, or complaints it receives via the toll-free number regarding the modifications described in Section 7.1 and their usability to Redbox pursuant to the terms of Section 8.2. Any compensation to The Lighthouse for its work pursuant to this section will be pursuant to the terms of Section 8.3.

8. Monitoring.

8.1 The Lighthouse will serve as monitor for purposes of compliance with paragraphs 7.1-7.10 of this Agreement, and will monitor Redbox Kiosks as follows:

8.1.1 User Testing. Beginning after the first 25% of Kiosks have been modified in accordance with Section 7.1 and continuing for twelve (12) months thereafter,

Lighthouse will report to Redbox on a quarterly basis the results of user testing by Legally Blind persons of up to 1% of Redbox Kiosks in California. After the first twelve (12) months user testing will occur every six (6) months for the Term of the Agreement. These Legally Blind persons will test each Kiosk for compliance with Section 7.1 by attempting to browse, rent, pay for, pick-up, and return media at the Kiosks using the tactile keypads and headphone jacks on the retrofitted Kiosks.

8.1.2 Quarterly testing of redbox.com. Upon implementation of the changes to redbox.com defined in Section 7.6 and continuing for 12 months thereafter, Lighthouse will quarterly report to Redbox the results of user testing by Legally Blind persons of redbox.com. After the first 12 months user testing will occur every six months for the Term of the Agreement. These blind persons will test redbox.com for compliance with Section 7.6 by attempting to register for an account on redbox.com, independently search for Redbox Kiosk locations, and independently browse and reserve movies and other Media available for rent at Redbox Kiosks utilizing screen-reading technology.

8.2 During the term of the Agreement, the Lighthouse shall notify Redbox if it identifies concerns raised by Settlement Class Members about the Nonvisual User Interface or the accessibility of www.redbox.com. Likewise, for the Term of the Agreement, Redbox will make reasonable efforts to identify and notify Lighthouse of complaints or concerns by any Settlement Class Members regarding the Nonvisual User Interface as defined in Section 7.1 or the accessibility of the changes made to redbox.com defined in Section 7.6. Communications between the Lighthouse and Redbox pursuant to this provision shall take place between one individual designated by the Lighthouse and one individual designated by Redbox for this purpose. These communications shall be kept confidential as between the Lighthouse and Redbox, and never shared with third parties, with the exception that such communications may be used for the purposes of enforcing a Party's obligations under the terms of this Agreement.

8.3 **Payments for Monitoring.** Within forty-five (45) days after the Effective Date, Redbox shall provide payment to the Lighthouse for monitoring pursuant to this Section in the amount of \$85,000.

8.4 **Maintenance of the Nonvisual User Interface.** Without interfering with Redbox's discretion to remove a Kiosk, leave a Kiosk non-functional for all users, or repair Kiosks within time periods it deems reasonable, Redbox will make reasonable and diligent efforts to maintain the Nonvisual User Interface at each Kiosk so that it is operable to the same extent the Kiosk is operable for other users.

8.5 **Maintenance of the accessibility features of redbox.com.** Redbox shall make reasonable and diligent efforts to maintain the accessibility modifications it makes to redbox.com pursuant to paragraphs 7.6-7.7 of this agreement.

8.6 **Disputes relating to maintenance of accessible features.** Any dispute regarding Redbox's maintenance of the Non-Visual User Interface as defined in Section 7.1 or maintenance of the accessibility modifications Redbox makes to redbox.com as defined in Section 7.6 shall be governed by the dispute resolution procedures in Section 13 of this agreement.

9. Payments to Individual Named Plaintiffs

9.1 **Payments to the Individual Named Plaintiffs.** Within forty-five (45) days after the Effective Date, Redbox shall make a payment of \$10,000 to each of the following Individual Named Plaintiffs in this lawsuit: Lisamaria Martinez, Joshua Saunders, Shana Ray, Angela Griffith, and Jennifer Westbrook.

10. Preliminary Approval, Notice to the Settlement Class, and Objections.

10.1 Promptly after execution of this Agreement, the Parties shall (1) jointly file the Agreement, including the attached Exhibits, with the Court; (2) file a joint motion for preliminary approval of the Agreement with the Court; and (3) notify the Court of the filings and request entry by the Court, on the earliest date acceptable to the Court, of the Preliminary Approval and the Proposed Scheduling Order attached as Exhibit E.

10.2 Notice Procedures. No later than (fourteen) 14 days after the Court enters the Preliminary Approval and Scheduling Order, Class Counsel will provide Notice to the Settlement Class utilizing the Notices attached as Exhibits C and D and in accordance with the plan described in the Declaration of Stuart Seaborn being filed with the Joint Motion for Preliminary Approval. In addition, no later than (fourteen) 14 days after the Court enters the Preliminary Approval and Scheduling Order, Redbox will provide the Notices attached as Exhibits C and D to any person that has complained to Redbox or Save Mart about the accessibility of the Kiosks in California for the blind or visually-impaired, if any, and to the extent Redbox or Save Mart is reasonably aware of such complaint and has either an email or mailing address for such person(s). If Redbox or Save Mart has an email address for any person requiring notice under this Section, the Notices shall be provided by email in an accessible electronic format, which are electronic formats, including Microsoft Word Documents, properly formatted PDF files, RTF files, and text files, that can be read using screen reading technology. If Redbox or Save Mart has a mailing address for anyone requiring notice under this Section, the mailing addresses for these individuals shall be provided to Class Counsel, and Class Counsel shall mail to each individual through U.S. mail hard copies of the Notices in an alternate accessible format. For purposes of this section, “alternate accessible format” refers to Braille documents, large print documents, audio recordings, or other formats that legally blind individuals can independently read.

10.2.1 At least fourteen (14) days before the Fairness Hearing, both Counsel for Redbox and Class Counsel will provide a declaration to the Court, attesting that they each disseminated notice consistent with this Settlement Agreement.

10.3 The Parties shall ask the Court to order the following procedures for objections: Any Settlement Class Member may object to the proposed Agreement by filing, within ninety (90) days of the deadline set by the Court for Class Counsel and Counsel for Defendants to provide Notice to the Settlement Class in accordance with Section 10.2 herein (or, in other words, by the end of the Claims Period), written objections with the Clerk of the Court. Only such objecting Settlement Class Members shall have the right, and only if they expressly seek it in their objection, to present objections orally at the Fairness Hearing. Responses by Redbox, Save Mart, and Class Counsel to any timely-filed objections shall be made no less than fourteen (14) business days before the Fairness Hearing.

11. Monetary Relief and Claims Procedure

11.1 Monetary Settlement Funds. To satisfy and settle all claims for damages of Settlement Class Members, Redbox shall pay \$1.2 million, the Damages Fund, to be allocated among Eligible Claimants in the manner set forth in paragraph 11.5-11.9.

11.2 Date of Payment. Within forty-five (45) days after the Effective Date, Redbox shall transfer to an interest-bearing trust account the Damages Fund. All interest earned on the Account shall be added to the Damages Fund. The Damages Fund shall not be used, either directly or indirectly, to make any payments under this settlement other than those listed in Sections 11.5-11.9 below.

11.3 Plaintiffs shall retain the Claims Administrator to: (1) distribute Claim Forms; (2) receive and track returned Claim Forms; (3) obtain supplemental information from claimants, as necessary; (4) receive and forward to the Parties and the Court requests to opt out;

(5) verify the validity of each claim submitted and certify those who are Eligible Claimants; (6) administer and disburse awards from the Damages Fund; and (7) perform such other duties as agreed by the Parties that are necessary to carry out the provisions of the Agreement.

11.3.1 Distribution of Claim Forms. Commencing with the Notice Deadline and continuing through the Claims Period, the Claim Form and Claim Form Instructions shall be available on-line at the Settlement Website in a manner which shall allow visitors either to fill out and submit the Claim Form on-line or download the form for printing and submission by mail. In addition, the Claims Administrator shall email or mail a Claim Form and Claim Form Instructions to each potential Settlement Class Member who makes a written or electronic request therefor. For any request for a Claim Form received prior to fourteen (14) days before the end of the Claims Period, the Claims Administrator shall email or mail the Claim Form and Claim Form Instructions within seven (7) days after receiving a written, telephonic, or electronic request. Thereafter, and until the end of the Claims Period, the Claims Administrator shall email or mail a Claim Form and Claim Form Instructions within three (3) business days (excluding weekends and holidays) after receiving a written, telephonic, or electronic request for a Claim Form from a potential Settlement Class Member. Any electronic or written request for Claim Forms received by Class Counsel or Redbox's counsel shall be forwarded to the Claims Administrator by electronic mail or facsimile within four (4) business days of its receipt, and within three (3) business days of receipt by the Claims Administrator, the Claims Administrator shall email or mail a Claim Form and Claim Form Instructions to the potential claimant. Any potential claimant who telephones Class Counsel, Redbox's counsel, or Save Mart's counsel and requests a Claim Form shall be referred to the Claims Administrator.

11.3.2 Filing of Completed Claim Forms. All claims for monetary payment from the Damages Fund shall be made electronically or in writing using the Claim Form and submitted either by mail or through an on-line procedure established by the Claims Administrator for this purpose. All Claim Forms must be submitted under penalty of perjury,

either through a signature on Claim Forms submitted by mail or through a click-through agreement for Claim Forms submitted on-line. In addition, Claimants will be required, either through a signature on Claim Forms submitted by mail or through a click-through agreement for Claim Forms submitted on-line, to waive any rights or causes of action arising from the disclosure of information provided on the Claim Form. Each potential Settlement Class Member, including minors, must submit his or her own Claim Form and may submit only one Claim Form. A parent or legal guardian may complete a Claim Form on behalf of a minor. A designated representative may complete a Claim Form on behalf of a claimant who, because of disability, cannot sign his or her name. Any parent or legal guardian who completes a Claim Form on behalf of a claimant must identify himself or herself on the Claim Form and submit the Claim Form under penalty of perjury.

11.3.3 Review of Claim Forms. The Claims Administrator shall initially review all Claim Forms to determine if the form is filled out completely, and in the case of Claim Forms submitted by mail, is signed properly. If the Claim Form is incomplete or not properly signed, the Claims Administrator shall return the Claim Form to the claimant, by mail if the claimant submitted the Claim Form by mail or by email if the claimant submitted the Claim Form electronically. The claimant shall be given a deadline of forty-five (45) days from the date of that mailing or email, within which the Claims Administrator must receive a corrected Claim Form. The failure of a claimant to complete and return a corrected Claim Form such that it is received by the Claims Administrator within forty-five (45) days shall result in a denial of his or her claim.

11.3.4 Approval of Claims. The Claims Administrator shall then conduct a review of all Claim Forms to determine whether they present Valid Claims submitted by Eligible Claimants in accordance with the terms and provisions of this Agreement.

11.3.5 Disputed Claims. If upon initial review of the Claim Form, the Claims Administrator is unable to determine whether it describes a Valid Claim, the Claims Administrator shall so notify the claimant by email or mail and state the reasons why the information contained on the Claim Form is insufficient. The claimant shall be given thirty (30) days thereafter in which to supplement or amend the Claim Form or provide such other information he or she wishes to assist the Claims Administrator in determining the validity of the claim. Upon further review of the Claim Form, including such additional information as may be submitted by the claimant, the Administrator shall (i) approve the claim, in which case, the claimant is eligible for an award from the Damages Fund; or (ii) reject the claim.

11.3.6 Rejected Claims. If the Claims Administrator rejects a claim as not meeting the terms or provisions of this Agreement, the Administrator shall so notify the claimant by email or mail.

11.3.7 Deadline for Administrator to Review All Claims. The Claims Administrator shall complete its review and issue a determination as to claim eligibility of all Claim Forms within ninety (90) days of the end of the Claims Period.

11.4 At least fourteen (14) days before the Fairness Hearing, the Claims Administrator will provide a declaration to Class Counsel, who shall file it with the Court, detailing any written requests to be excluded from the Class Payment from Damages Fund to Eligible Claimants.

11.5 Each Eligible Claimant shall be entitled to make only one claim and shall be awarded a maximum of four thousand dollars (\$4,000). If, however, the total dollar amount to be paid to Eligible Claimants exceeds one million two hundred thousand dollars (\$1,200,000) plus accrued interest, then the amount paid per claim shall be reduced pro rata so that the total amount paid from the Damages Fund does not exceed one million two hundred thousand dollars (\$1,200,000) plus accrued interest.

11.6 Not later than fourteen (14) days after the deadline for completion of the claims administration process set forth in Paragraph 11.3, the Claims Administrator shall provide Class Counsel and Redbox with a list of the names, addresses (physical and/or email), telephone numbers, a copy of the Claims Forms, and the amount of the validated award from the Damages Fund, of all persons who have submitted claims in connection with this Lawsuit. The Claims Administrator shall include its determination as to which claimants are Eligible Claimants and which claims are Valid Claims.

11.7 Within fourteen (14) days after the creation of the Damages Fund, the Claims Administrator shall cause to be mailed, via certified mail, checks in the amounts specified in the claims determination process, and 1099 forms to Eligible Claimants. All checks shall be negotiable for no more than one (1) year from the date of mailing.

11.8 All returned checks of claimants for whom no additional address is obtained shall be held by the Claims Administrator for sixty (60) days. If no claim is made for such checks during this time period, the funds from such checks shall become part of the funds to be allocated to the Cy Pres recipients and distributed in accordance with Section 11.9 of this Agreement.

11.9 Cy Pres. If any portion of the Damages Fund has not been distributed as provided for in this Agreement after a period of four hundred (400) days has elapsed from the date on which settlement checks are mailed by the Claims Administrator, then such remaining amounts shall be provided to The Paul Longmore Institute. No unused portion of the settlement fund shall revert to Defendants.

12. Opt-Out Right

12.1 Any potential Settlement Class Member (but not a Named Plaintiff) may request exclusion from the Settlement Class for purposes of monetary relief only. Potential

Settlement Class Members who wish to opt out for purposes of participation in the monetary portion of the settlement must submit request for exclusion (“Opt-Out Statement”) to the Claims Administrator using the system established by the Court-ordered notice to the class. Opt-Out Statements must be received by the Claims Administrator by the Objection Deadline. The Opt-Out Statement shall, at minimum, contain the following language or words to the same effect:

I hereby exercise my right to Opt-Out of the damages portion of the class action lawsuit known as Lighthouse for the Blind and Visually Impaired et al. v. Redbox Automated Retail, LLC et al., case no. 12-cv-00195 PJH. By Opting Out, I understand that I will not be awarded any statutory damages from this lawsuit but that I am preserving any rights I would otherwise have to sue Redbox Automated Retail, LLC and Save Mart Supermarkets for damages.

The Settlement Website shall contain an on-line feature for members of the Settlement Class to opt out, either by submitting an Opt-Out form on-line or downloading an Opt-Out form for printing and submission by mail.

12.2 To the extent a potential Settlement Class Member submits an Opt-Out Statement with language that materially differs from the foregoing, either Party reserves the right to seek review of the Court to have the Opt-Out statements declared valid or invalid. All potential Settlement Class Members who do not timely opt out of the damages provisions of this Agreement shall be bound by the resolution of any and all issues arising in connection with the Settlement Class claims for damages.

12.3 No Settlement Class Member may opt out of the release of claims for injunctive relief of this Agreement. No Named Plaintiff may opt out of any of the provisions of this Agreement.

12.4 The Claims Administrator shall stamp the date received on the original of any written Opt-Out Statement it receives, and keep an electronic record of the date it received any electronic Opt-Out Statement. The Claims Administrator shall provide copies of the Opt-Out

Statements to Class Counsel, Save Mart's counsel, and Redbox's counsel not later than three (3) business days after receipt thereof and shall file the Opt-Out Statements with the Clerk of the Court not later than ten (10) business days prior to the date set for the Final Approval hearing. The Claims Administrator shall retain copies of all Opt-Out Statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

13. **Dispute Resolution.** Any disputes relating to this Agreement shall be resolved according to the following procedure:

13.1 Meet and Confer. If any Party believes that a dispute exists relating to this Agreement, it shall notify the other Party or Parties. The Parties involved with the dispute (the "Involved Parties") shall meet and confer in good faith, in an effort to reach agreement. A Party not involved with or impacted by the dispute has no obligation to participate in the dispute resolution process outlined in this Agreement.

13.2 Voluntary Mediation. If the Involved Parties are unable to resolve the dispute through the meet-and-confer process within thirty (30) days, the Involved Parties may consider mediation in an effort to reach agreement, but mediation is not required. The Involved Parties shall make reasonably diligent efforts to utilize video conferencing or other cost-effective formats for mediations sessions held pursuant to this Section. This agreement to use mediation as a possible means of dispute resolution shall not be construed as an admission that either side agrees in advance to pay the other side's fees and costs, or the mediator's fees, associated with any mediation session. Mediation-related fees and costs should be resolved in the context of the mediation.

13.3 Submission to U.S. Magistrate Judge. If the Involved Parties are unable to resolve the dispute through the meet and confer process or, if selected, mediation, within sixty (60) days after notification of the dispute in accordance with paragraph 13.1, the sole manner for resolving the dispute is for a Party to present the dispute to the United States Magistrate Judge

assigned jurisdiction over the enforcement of this Settlement. The Parties agree that the Magistrate Judge's ruling shall be final and non-appealable, and may not be objected to. Attorneys' fees and costs incurred in connection with bringing a dispute before the Magistrate Judge shall be awarded in accordance with applicable law.

14. **Attorneys' Fees and Costs.** Redbox agrees to make the following payments in attorneys' fees and costs to class counsel for their work on this matter: (1) \$610,000 in attorneys' fees for class counsel's work on this matter through February 20, 2014, (2) \$80,000 in attorneys' fees for class counsel's work in obtaining final approval of the agreement, (3) \$75,000 in attorneys' fees for class counsel's work monitoring and enforcing the agreement for the term of the agreement, and (4) \$35,000 for Plaintiffs' costs. These attorneys' fees and costs total \$800,000. Such fees and costs are payable within forty-five (45) days of the Effective Date of this Agreement. Defendants shall not oppose Plaintiffs' application for attorneys' fees and costs.

15. **Save Mart Responsibilities.** Save Mart is not responsible for performing any injunctive relief under this Agreement, including, but not limited to, under paragraph 7 of this Agreement and is not responsible for any of the monetary payments under this Agreement, including, but not limited to, under Paragraphs 8, 9, 11, 14 or 17 of this Agreement. The Parties acknowledge that the commitments discussed in this Agreement are sufficient consideration for the release and dismissal of Save Mart as set forth herein.

16. **Continuing Jurisdiction.** The Parties agree that the United States District Court for the Northern District of California shall have continuing jurisdiction throughout the Term of this Agreement to interpret and enforce this Agreement as provided in Section 13 herein. The Parties agree to jointly request that the Court appoint a United States Magistrate Judge in the Northern District of California for the purpose of such ongoing enforcement jurisdiction upon final approval of the agreement or at any other such time the Court deems necessary.

17. **Payment of Claims Administrator.** Within forty-five (45) days of the Effective Date, Redbox shall make a payment of twenty-five thousand dollars (\$25,000) to the Claims Administrator to cover the Claims Administrator's reasonable fees, expenses, and costs. Plaintiffs shall be responsible for any reasonable fees, expenses, and costs that the administrator incurs beyond \$25,000.

18. **Releases.**

18.1 Release of Claims for Injunctive Relief.

18.1.1 Effective on the date of the Final Approval, Named Plaintiffs and the Settlement Class Members and each of their executors, successors, heirs, assigns, administrators, agents, and representatives (the "Injunctive Releasing Parties"), in consideration of the relief set forth herein fully and finally release (1) Redbox and its present and former parents, subsidiaries, affiliates, and insurers, and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns; and (2) Save Mart and its present and former parents, subsidiaries, affiliates, and insurers, and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns from the Released Injunctive Claims as defined below.

18.1.2 The "Released Injunctive Claims" are any and all claims, rights, demands, charges, complaints, actions, suits, and causes of action for injunctive or declaratory relief relating to the subject matter of the Lawsuit, arising between January 12, 2010 through the date of Final Approval of this Agreement. The "Released Injunctive Claims" also include all claims, rights, demands, charges, complaints, actions, suits, causes of action, or liabilities of any kind for injunctive or declaratory relief based on conduct that occurs after Final Approval of this Agreement and during the Term of this Agreement to the extent that such claims arise out of or relate to actions, omissions, or conduct that are in compliance with the terms of this Agreement.

19. Release of Claims for Damages.

19.1 Effective on the last day of the Claims Period or the date of Final Approval, whichever is later, Named Plaintiffs and all Settlement Class Members who have not previously opted out of the damages claims, and do not opt out of this Agreement pursuant to Section 12 herein, and each of their executors, successors, heirs, assigns, administrators, agents, and representatives (collectively, the “Damages Releasing Parties”), in consideration of the relief set forth herein fully and finally release (1) Redbox and its present and former parents, subsidiaries, affiliates, and insurers, and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns; and (2) Save Mart and its present and former parents, subsidiaries, affiliates, and insurers, and each of their respective present, former, or future officers, directors, employees, shareholders, administrators, executors, affiliates, successors, and assigns from the Released Damages Claims as defined below.

19.2 The “Released Damages Claims” are any and all claims, rights, demands, charges, complaints, actions, suits, causes of action, and liabilities of any kind of damages relating to the subject matter of the Lawsuit arising between January 12, 2010 through the last day of the Claims Period.

19.3 **Section 1542 Waiver.** The Injunctive Releasing Parties and the Damages Releasing Parties waive (i) all rights that they may have based on any unknown and undiscovered facts relating to the subject matter of the lawsuit and (ii) all rights that are provided in California Civil Code Section 1542 relating to the subject matter of the lawsuit which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

20. Press Releases. Unless a party consents otherwise, press releases regarding the

Settlement Agreement and anything related thereto (including but not limited to the modifications being made to the Kiosks) will be jointly issued by all parties, and all parties will have a reasonable opportunity to review and comment on the release. No party shall issue such a release without the approval of all parties.

21. **Entire Agreement.** This Agreement contains all the agreements, conditions, promises, and covenants among Redbox, Save Mart, the Named Plaintiffs, Class Counsel, and the Settlement Class regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral, with respect to the subject matter of the present Agreement.

22. **Communications to Redbox, Save Mart, and Class Counsel.** Unless otherwise indicated in the Agreement, all notices or communications required by this Agreement shall be in writing by email and U.S. Mail or overnight delivery service addressed as follows:

22.1 To Named Plaintiffs, Class Counsel, or the Settlement Class: Stuart Seaborn, Disability Rights Advocates, 2001 Center Street, 3rd Floor, Berkeley, CA 94704, sseaborn@dralegal.org.

22.2 To Redbox: Amanda Beane, Perkins Coie LLP, 1201 Third Avenue, Suite 4900, Seattle WA 98101, abeane@perkinscoie.com and Sue Stott, Perkins Coie LLP, Four Embarcadero Center, Suite 2400, San Francisco, CA 94111-4131, sstott@perkinscoie.com.

22.3 To Save Mart: James M. Cipolla, Save Mart Supermarkets, PO Box 4278, Modesto, CA 95352-4278, JCipolla@savemart.com, and Clifford Yin, Coblenz Patch Duffy & Bass LLP, One Ferry Building, Suite 200, San Francisco, CA 94111, cey@cpdb.com.

23. **Modification.** Prior to Final Approval, this Agreement can only be amended by written agreement of the Parties hereto. Following Final Approval, no modification of this Agreement shall be effective unless it is pursuant to Court Order.

24. **Drafting of this Agreement.** This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

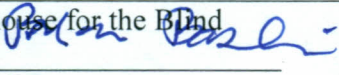
25. **Execution by Facsimile and in Counterparts.** This Agreement may be executed by the Parties hereto by facsimile or PDF signatures and in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

26. **Duty to Support and Defend Agreement.** Named Plaintiffs, Class Counsel, Save Mart, and Redbox each agree to abide by all of the terms of this Agreement in good faith and to support it fully, and shall use their best efforts to defend this Agreement from any legal challenge, whether by appeal or collateral attack.

27. **Class Action Fairness Act.** Redbox and Save Mart will provide information concerning the Agreement in compliance with CAFA.

28. **Deadlines.** The Parties and the Court recognize that from time to time unforeseen events, including but not limited to, exigent business circumstances, labor disputes, natural disasters, personnel issues, and negotiations with third parties, cause delays in the accomplishment of objectives no matter how well-intentioned and diligent the Parties may be. Accordingly, with regard to the provisions of this Agreement that require that certain acts be taken within specified periods, the Parties understand and agree that Court approval shall not be required for reasonable extensions of deadlines. In the event that any Party determines that an action required by this Agreement cannot be taken within the specified time period, that Party shall promptly notify the other Parties that it anticipates a delay, the reasons for the delay, and proposed alternative deadline. The Parties shall endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party does not agree to the proposed delay, the Parties shall resolve the dispute using the procedures described in Section 13 herein.

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind
by 

Date: 6/25/14

Angela Griffith

Date: _____


Lisamaria Martinez

Date: 6/25/14

Josh Saunders

Date: _____

Shana Ray

Date: _____

Jennifer Westbrook

Date: _____

Redbox Automated Retail, LLC
by Mark Horak
President

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Angela Griffith
Lighthouse for the Blind
by _____

Date: 6/25/2014

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____

Josh Saunders

Date: _____

Shana Ray

Date: _____

Jennifer Westbrook

Date: _____

Redbox Automated Retail, LLC
by Mark Horak
President

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind
by _____

Date: _____

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____

Josh Saunders

Date: _____



Shana Ray

Date: 6/26/2014

Jennifer Westbrook

Date: _____

Redbox Automated Retail, LLC
by Mark Horak
President

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind
by _____

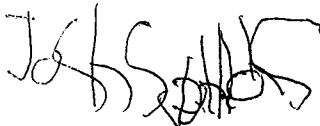
Date: _____

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____



Josh Saunders

Date: 6/26/2014

Shana Ray

Date: _____

Jennifer Westbrook

Date: _____

Redbox Automated Retail, LLC
by Mark Horak
President

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind
by _____

Date: _____

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____

Josh Saunders

Date: _____

Shana Ray

Date: _____

Jennifer Westbrook
Jennifer Westbrook

Date: 06/25/14

Redbox Automated Retail, LLC
by Mark Horak
President

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind

by _____

Date: _____

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____

Josh Saunders

Date: _____

Shana Ray

Date: _____

Jennifer Westbrook

Date: _____

Redbox Automated Retail, LLC

by Mark Horak

President



Date: _____

Save Mart Supermarkets

by Shawnte Priest

Director of Regulatory Law and Compliance

Date: 6.26.14

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed,

Lighthouse for the Blind
by _____

Date: _____

Angela Griffith

Date: _____

Lisamaria Martinez

Date: _____

Josh Saunders

Date: _____

Shana Ray

Date: _____

Jennifer Westbrook

Date: _____


Redbox Automated Retail, LLC
by Mark Horak
President

APPROVED BY
REDBOX LEGAL
F.S.

Date: _____

Save Mart Supermarkets
by Shawnte Priest
Director of Regulatory Law and Compliance

Date: _____

EXHIBIT A

CLAIM FORM

Lighthouse v. Redbox, Case No. C-12-00195-PJH

**IT IS IMPORTANT THAT YOU REVIEW THE ACCOMPANYING INSTRUCTIONS
BEFORE YOU BEGIN FILLING OUT THIS CLAIM FORM**

**FOR YOUR CLAIM TO BE CONSIDERED, YOU MUST COMPLETE THE FORM
AND SUBMIT IT ON-LINE BY NOVEMBER 12, 2014 OR BY MAIL POST-MARKED
NO LATER THAN NOVEMBER 12, 2014.**

**You may submit this form on-line at the settlement website
www.lighthouseredboxsettlement.com. Go to the “Submit Claim Form Online” function on
the settlement website and follow the instructions that appear.**

**You may also submit this form by mail by filling out the form, signing it at the bottom, and
mailing it to:**

Lighthouse v. Redbox Claims Administrator
P.O. Box 43034
Providence, RI 02940-3034

**YOU MUST COMPLETE THE ENTIRE CLAIM FORM AND SIGN IT UNDER PENALTY
OF PERJURY OR YOUR CLAIM MAY BE DENIED**

1. Full Name:
2. Current Address:
3. Email Address:
4. Home Telephone Number:
5. Day Time Telephone Number:
6. Social Security Number:
7. Age:

To have a valid claim, you must while in California have been legally blind and, between
January 12, 2010 and November 12, 2014:

- (1) Attempted to access DVD, Blu-ray, or video game rental services at a Redbox kiosk in California and been unable to do so due to the visual interface; or
- (2) Had knowledge that Redbox kiosks in California utilize a visual user interface, and, as a result of that knowledge, been deterred from attempting to rent a DVD, Blu-ray disk, or video game from a Redbox kiosk in California on a particular occasion.

For the following questions, numbers 9 and 10, please answer “yes” or “no.”

8. Have you been legally blind at any time since January 12, 2010?

YES _____

NO _____

For the purposes of this claims process, legally blind persons are those with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200 in the better eye, or they have a visual field limitation such that the widest diameter of the visual field, in the better eye, subtends an angle no greater than 20 degrees, as measured with a Goldmann III4e or equivalent size stimulus. Some people who meet this definition have limited vision. Others have no vision.

9. You attempted to access DVD, Blu-ray, or video game rental services at a Redbox kiosk in California between January 12, 2010 and November 12, 2014 while you were legally blind?

YES _____

NO _____

10. Between January 12, 2010 and November 12, 2014, you were aware that Redbox kiosks in California utilize a visual user interface, and, as a result, were deterred from renting a DVD, Blu-ray disk, or video game from a Redbox kiosk in California on a particular occasion?

YES _____

NO _____

I recognize that by submitting this claim either on-line or by mail, I am affirming under penalty of perjury that the information set forth in my claim is true and correct to the best of my knowledge and belief. Furthermore, by submitting this claim either on-line or by mail, I agree to waive any rights or causes of action arising from the disclosure of information provided herein.

If you are under the age of 18 or submitting this form through a representative, please complete the following section. If not, go to the next heading to submit your claim on line. For claim forms submitted by mail, fill out and sign below:

Signature

Date

For claim forms submitted on-line go to the SUBMIT ON-LINE button at the bottom of this form.

If claimant is under age 18:

Name of Parent or Legal Guardian:

Address of Parent or Legal Guardian, if different from Claimant's:

Day Time Telephone Number of Parent or Legal Guardian, if different from Claimant's:

Signature of Parent or Legal Guardian

Date

If a Designated Representative completed the form on behalf of a Claimant:

Name of Designated Representative:

Address of Designated Representative:

Day Time Telephone Number of Designated Representative:

Signature of Designated Representative

Date

[SUBMIT ON-LINE]

EXHIBIT B

CLAIM FORM INSTRUCTIONS

Read Carefully Before You Complete the Attached Claim Form.

1. To file a claim in this case, you must be an eligible member of the Settlement Class.
2. Eligible members of the Settlement Class include all legally blind individuals who, since January 12, 2010, have attempted to access the products or services available at Redbox kiosks located in California but who were unable to because of the visual interface, or who were aware that Redbox kiosks in California utilize a visual user interface, and who, as a result, were deterred from attempting to access the products or services of Redbox kiosks in California on a particular occasion., and who have not filled out an Opt-Out statement requesting to be excluded from the monetary relief portion of the case.
3. For the purposes of this claims process, legally blind persons are those with visual impairments who meet the legal definition of blindness in that they have a visual acuity with correction of less than or equal to 20 x 200 in the better eye, or they have a visual field limitation such that the widest diameter of the visual field, in the better eye, subtends an angle no greater than 20 degrees, as measured with a Goldmann III4e or equivalent size stimulus. Some people who meet this definition have limited vision. Others have no vision.
4. You may be eligible to receive money if you are a member of the Settlement Class and submit a valid claim form. There is a damages fund of \$1.2 million that will be shared among eligible claimants. No claimant can receive more than \$4,000, and each eligible claimant's portion will be shared on a pro-rata basis if the number of eligible claimants exceeds three hundred (300). Therefore, you may receive less than \$4,000.
5. Each person who wishes to make a claim must submit his or her own claim form.
6. You must answer all questions and fill in all applicable blanks on the claim form. Failure to complete the claim form may result in your claim being denied.
7. If you are preparing a written claim form to mail in, you may attach additional sheets if you need more space to answer questions or provide information. Write your full name and Social Security Number on each additional sheet.
8. If you are filing an online claim form, you must complete an online signature indicating that you are submitting the form under penalty of perjury and that the information on the form is true and correct. If you are preparing a written claim form to mail in, you must sign the form under penalty of perjury attesting that the information on the form is true and correct. Failure to sign the claim form may result in your claim being denied.

9. If you are under 18 years of age, your parent or legal guardian must also sign your claim form.
10. Your claim form must be **postmarked or submitted online** on or before November 12, 2014 or **your claim may be denied.** To ensure that you have a record of your claim and date of mailing, you should keep a copy of your signed claim form and, if you choose to mail the claim form, send it via certified mail and keep a copy of the postmarked certified mail receipt. However, you may also mail the claim form by ordinary first class mail. For your records and reference, please keep these instructions.
11. If you want further information about the settlement or have questions about these instructions or about how to complete the claim form, please contact the Claims Administrator, KCC LLC or Class Counsel. Contact information for KCC LLC and Class Counsel is listed below. **Do not contact the Court or the Clerk of Court.**
12. Filing this claim does not automatically guarantee that you will receive any award of cash. Your claim and the information you provide will be subject to review and verification by the Claims Administrator. You may be asked to provide additional information to support your claim. If you do not respond to a request for additional information by the date such response is due, your claim may be denied.
13. You do not need to have an attorney to help you submit a claim form. If you wish to contact Class Counsel, they will attempt to answer any questions you might have. Additionally, if you wish to consult with your own attorney, you may do so at your own expense.
14. It is your responsibility to keep the Claims Administrator advised of any change in your address. If you do not keep the Claims Administrator advised of your current address, any monetary award to which you may be entitled could be forfeited. Any change of address should be reported in writing along with your complete name and signature, Social Security Number, and former address to the Claims Administrator.

Lighthouse v. Redbox Claims Administrator:

Lighthouse v. Redbox Claims Administrator
P.O. Box 43034
Providence, RI 02940-3034

Class Counsel:

Disability Rights Advocates
2001 Center Street, 4th Floor
Berkeley, CA 94704-1204
(510) 665-8644

Law Offices of Jay Koslofsky
P.O. Box 9236
Berkeley, CA 94709
(510) 280-5627

EXHIBIT C

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

ATTENTION: ALL LEGALLY BLIND INDIVIDUALS WHO HAVE ATTEMPTED TO ACCESS THE DVD, BLU-RAY AND/OR VIDEO GAME RENTAL SERVICES AVAILABLE AT REDBOX KIOSKS IN CALIFORNIA SINCE JANUARY 12, 2010 OR WHO HAVE BEEN DETERRED FROM DOING SO DUE TO THE LACK OF FEATURES FOR BLIND USERS AT REDBOX KIOSKS SINCE JANUARY 12, 2010

YOU MAY HAVE A CLAIM UNDER THE SETTLEMENT DESCRIBED BELOW

READ THIS NOTICE AND INSTRUCTIONS CAREFULLY

This notice is to inform you about the proposed settlement that would resolve the class action lawsuit *Lighthouse for the Blind and Visually Impaired, et al. v. Redbox Automated Retail, LLC, et al.*, Case No. 12-cv-00495-PJH (N.D. Cal.). The lawsuit alleges that Redbox Automated Retail, LLC (“Redbox”) violated federal and California law by offering video rental services at self-service, touchscreen kiosks that blind persons cannot independently access because the kiosks utilize an exclusively visual user interface. Save Mart Supermarkets (“Save Mart”) is also a defendant in this case. Redbox and Save Mart deny all liability in the case. The settlement, which must be approved by the Court, would resolve the lawsuit.

I. SUMMARY OF THE PROPOSED SETTLEMENT

Under the settlement agreement, Redbox will modify all of its kiosks in California so that legally blind customers will be able to independently browse, select, pay for, and return media (including DVDs, Blu-ray discs, and video games) at the kiosks. The modifications will include the addition of a standard headphone jack, a tactile keypad, and text-to-speech output that will read the text and commands on the touchscreen aloud. Redbox will complete these modifications at all Redbox kiosks in California within thirty months of final approval of this settlement agreement or within eighteen months of the resolution of any appeals. Under the agreement, Redbox will also make accessibility improvements to redbox.com within eighteen months of final approval of the settlement to ensure that blind individuals using screen reading technology can browse available movies, browse kiosk locations, reserve movies for pick up, and register their email addresses on Redbox.com independently.

At this time, Redbox is providing a customer service phone line to remotely assist legally blind customers with browsing, renting, paying for, and returning movies or other media from Redbox kiosks, and Redbox will continue to provide this customer service phone line until the accessibility modifications to the kiosks are complete. Once Redbox completes the accessibility modifications to Redbox kiosks, the Lighthouse for the Blind and Visually Impaired (“Lighthouse”) will maintain, for the remainder of the term of this settlement, a toll-free telephone number that will allow legally blind individuals to report questions, concerns, or complaints regarding the nonvisual user interfaces on Redbox kiosks in California.

In addition, the settlement includes a \$1.2 million (\$1,200,000) fund to pay valid claims submitted by eligible members of the class. Eligible members of the settlement class include legally blind persons who, between January 12, 2010 and the end of the claims period, attempted to access the services at a Redbox kiosk in California but were unable to do so due to the visual

user interface, or who were aware that Redbox kiosks use an exclusively visual interface and, as a result, were deterred from accessing the services of a Redbox kiosk in California on a particular occasion. Each eligible member of the class will be entitled to make one claim, which in no event will be worth more than \$4,000. **Class members will receive less than \$4,000** if the total value of valid claims exceeds the value of the settlement fund (that is, if there are over 300 claimants), in which case the value of all claims will be shared on a pro rata basis. If there is money left over after payment of all valid claims, the left-over funds will be donated to the Paul Longmore Institute at San Francisco State University.

The settlement also provides that the five named plaintiffs who served as class representatives will receive payments of \$10,000 each. Finally, Disability Rights Advocates and the Law Offices of Jay Koslofsky (“Class Counsel”), the attorneys who represent the class, will be paid \$690,000 in attorneys’ fees for their work on the case, \$35,000 in costs, and \$75,000 for their future work monitoring compliance with the settlement and enforcing the agreement. Class Counsels’ motion for attorneys’ fees will be available at www.lighthouseredboxsettlement.com by October 29, 2014 or can be requested from Class Counsel (contact information below) after October 29, 2014.

II. THE EFFECT OF THE SETTLEMENT ON THE RIGHTS OF CLASS MEMBERS

All class members will be bound by the terms of the settlement relating to the accessibility of Redbox kiosks in California if the settlement is approved by the Court. In other words, once the settlement is approved, all class members will release and forever discharge claims related to the accessibility of the kiosks or redbox.com for people who are legally blind or visually-impaired. However, class members may opt out of the monetary portion of the settlement. Class members who opt out of the monetary portion of the settlement will retain the right to file their own claims for damages against Redbox or Save Mart arising from access barriers they have faced at Redbox kiosks due to the visual interface. Class members who do not opt out of the monetary portion of the settlement may utilize the claims procedure described in Section IV below to submit claims for monetary damages.

III. OBJECTING TO THE SETTLEMENT

You can ask the Court to deny approval of this settlement by filing an objection with the Court. You can't ask the Court to order a larger or different settlement; the Court can only approve or deny the proposed settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You must send written objections only to the Court. The Court must receive your objection by November 12, 2014 for it to be considered. All written objections and supporting papers must clearly identify the following case name and number: *Lighthouse for the Blind and Visually Impaired, et al. v. Redbox Automated Retail, LLC, et al.*, 12-cv-00495-PJH (N.D. Cal.). You may file the objection in person or mail it to the Court at:

Class Action Clerk of the U.S. District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102-1204

If you file an objection, you may also appear at the final approval hearing which will address the settlement's fairness. You may appear at the hearing either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. The hearing is scheduled for December 17, 2014 at 9 a.m., before Judge Phyllis Hamilton at the Oakland Federal Courthouse, Courtroom 3, Third Floor, 1301 Clay Street, Oakland, CA 94612. The date of the final approval hearing may change without further notice to the class. You should check the settlement website at www.lighthouseredboxsettlement.com, or the U.S. Court's Public Access website at PACER.gov to get the most current information concerning the date of the final approval hearing. To be heard at the hearing, you must include notice of your intent to appear at the hearing with your written objection.

IV. SUBMITTING A CLAIM FOR MONEY DAMAGES

You may be eligible for monetary relief under the settlement if you are legally blind and you attempted but were unable to access the goods and services available at Redbox kiosks in California on or after January 12, 2010 due to the kiosks' visual user interface, or if you were aware that Redbox kiosks in California utilize a visual user interface, and, as a result, were deterred from accessing the goods and services of a Redbox kiosk in California on a particular occasion on or after January 12, 2010. There is a damages fund of \$1.2 million available for all claimants. No claimant can receive more than \$4,000, and each eligible claimant's portion will be shared on a pro-rata basis if the number of eligible claimants exceeds three hundred (300). Therefore, you may receive less than \$4,000.

You must submit a valid claim form to recover monetary compensation under this settlement. You may complete and submit a claim form on the settlement website at www.lighthouseredboxsettlement.com or by requesting a claim form from KCC LLC, the claims administrator, by phone, letter, fax, or email at:

Lighthouse v. Redbox Claims Administrator
P.O. Box 43034
Providence, RI 02940-3034
(415) 798-5900
RedboxSettlement@kccllc.com
(fax to be provided for claims)

All claims submitted online must be submitted by November 12, 2014. All claims submitted by mail must be postmarked no later than November 12, 2014.

V. OPTING OUT OF THE DAMAGES PORTION OF THE SETTLEMENT

You have the right to opt out of the damages portion of the settlement. If you opt out, you will not receive any monetary compensation from this settlement. Class members who opt out of

the monetary portion of the settlement, however, will retain the right to file their own claims for damages against Redbox or Save Mart arising from access barriers they have faced at Redbox kiosks in California due to the visual interface. You may complete and submit an opt-out request at www.lighthouseredboxsettlement.com, or you may mail a completed opt-out request to the claims administrator at the address listed in Section IV.

All requests to opt out must be made by November 12, 2014. Requests to opt out may be made only through www.lighthouseredboxsettlement.com or by timely mailing an opt-out request to Lighthouse v. Redbox Claims Administrator, P.O. Box 43034, Providence, RI 02940-3034. Please note that if the settlement is approved, all members of the class who do not properly opt out will be bound by the monetary damages portion of the settlement.

VI. FURTHER INFORMATION

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.lighthouseredboxsettlement.com, contact class counsel using the information below, access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

To obtain a copy of this notice in alternate accessible formats, contact Class Counsel using the information below.

VII. CONTACT INFORMATION

Please do not contact the Court, the Court clerk's office, or Defense Counsel with questions about this settlement or the claims process. Any questions must be directed to class counsel at (510) 665-8644, or the address below.

Class Counsel:

Michael Nunez, Esq.
Disability Rights Advocates
2001 Center Street, Fourth Floor
Berkeley, CA 94704

Defendants' Counsel:

Sue. J. Stott, Esq.
Perkins Coie LLP
Four Embarcadero Center, Suite 2400
San Francisco, CA 94111-4131

Amanda J. Beane, Esq.
Perkins Coie LLP
1201 Third Avenue, Suite 4900

Seattle, WA 98101

EXHIBIT D

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

ATTENTION: ALL LEGALLY BLIND INDIVIDUALS WHO HAVE ATTEMPTED TO ACCESS THE DVD, BLU-RAY AND/OR VIDEO GAME RENTAL SERVICES AVAILABLE AT REDBOX KIOSKS IN CALIFORNIA SINCE JANUARY 12, 2010 OR WHO HAVE BEEN DETERRED FROM DOING SO DUE TO THE LACK OF FEATURES FOR BLIND USERS AT REDBOX KIOSKS SINCE JANUARY 12, 2010

YOU MAY HAVE A CLAIM FOR MONETARY DAMAGES UNDER THE SETTLEMENT DESCRIBED BELOW

This notice is to inform you that you may have a claim for monetary damages under the proposed settlement that would resolve the class action lawsuit *Lighthouse for the Blind and Visually Impaired, et al. v. Redbox Automated Retail, LLC, et al.*, Case No. 12-cv-00495-PJH (N.D. Cal.). The lawsuit alleges that Redbox Automated Retail, LLC (“Redbox”) violated federal and California law by offering video and game rental services at self-service, touchscreen kiosks in California that legally blind persons cannot independently access. Save Mart Supermarkets (“Save Mart”) is also a defendant in the case. Redbox and Save Mart deny all liability. The proposed settlement would require that Redbox add tactile controls, headphone jacks, and text-to-speech output to all of its touchscreen video rental kiosks in California so that legally blind individuals can independently access Redbox kiosks in California.

You may be entitled to payment of money as part of this settlement. There is a damages fund of \$1.2 million that will be shared among eligible claimants. You may be eligible to receive money if you are legally blind and you attempted but were unable to access the goods and services available at Redbox kiosks in California on or after January 12, 2010 due to the kiosks’ visual user interface, or if you were aware that Redbox kiosks in California utilize a visual user interface, and, as a result, were deterred from accessing the goods and services of a Redbox kiosk in California on a particular occasion on or after January 12, 2010. No claimant can receive more than \$4,000, and each eligible claimant’s portion will be shared on a pro-rata basis if the number of eligible claimants exceeds three hundred (300). Therefore, you may receive less than \$4,000.

To make a claim, you must submit a claim form by the claims deadline. You can obtain a claim form from www.lighthouseredboxsettlement.com or by contacting the Claims Administrator using the information below. Claim forms submitted electronically must be submitted no later than November 12, 2014; printed claim forms, which should be mailed to the Claims Administrator at the address below, must be postmarked no later than November 12, 2014.

You also have the right to opt out of the damages portion of the settlement and the right to object to the settlement. The settlement website www.lighthouseredboxsettlement.com contains a more detailed notice with procedures for opting out of the damages portion of the settlement and for objecting to the settlement, and a complete copy of the settlement agreement.

Any questions about the settlement, including requests for documents in alternate accessible formats, should be directed to class counsel using the contact information below.

Claims Administrator:

Lighthouse v. Redbox Claims Administrator
P.O. Box 43034
Providence, RI 02940-3034
Phone: (415) 798-5900

Class Counsel:

Disability Rights Advocates
2001 Center Street, 4th Floor
Berkeley, CA 94704
Phone: (510) 665-8644

EXHIBIT E

1 LAURENCE PARADIS (California Bar No. 122336)
2 STUART SEABORN (California Bar No. 198590)
3 MICHAEL S. NUNEZ (California Bar No. 280535)
4 DISABILITY RIGHTS ADVOCATES
5 2001 Center Street, Third Floor
6 Berkeley, CA 94704
7 Telephone: (510) 665-8644
8 Facsimile: (510) 665-8511
9 TTY: (510) 665-8716

6 JAY KOSLOFSKY (California Bar No. 97024)
7 LAW OFFICES OF JAY KOSLOFSKY
8 P.O. Box 9236
9 Berkeley, CA 94709
10 Telephone: (510) 280-5627
11 Fax: (510) 845-3707

12 Attorneys for Plaintiffs

13 (additional attorneys listed on next page)

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

15 LIGHTHOUSE FOR THE BLIND AND
16 VISUALLY IMPAIRED, on behalf of
17 itself and all others similarly situated,
18 ANGELA GRIFFITH, on behalf of herself
19 and all others similarly situated, LISA
20 MARIA MARTINEZ, on behalf of herself
21 and all others similarly situated, JOSH
22 SAUNDERS, on behalf of himself and all
23 others similarly situated, SHANA RAY, on
24 behalf of herself and all others similarly
25 situated, and JENNIFER WESTBROOK,
26 on behalf of herself and all others similarly
27 situated,

28 Plaintiffs,

v.

REDBOX AUTOMATED RETAIL, LLC,
AND SAVE MART SUPERMARKETS,

Defendants.

No. 12-cv-00195 PJH

**(PROPOSED) ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT;
CERTIFYING SETTLEMENT CLASS;
DIRECTING ISSUANCE OF
SETTLEMENT NOTICE; AND
SCHEDULING OF HEARING ON FINAL
APPROVAL**

1 Sue Stott (Bar No. 91144)
SStott@perkinscoie.com
2 PERKINS COIE LLP
Four Embarcadero Center, Suite 2400
3 San Francisco, CA 94111-4131
Telephone: 415.344.7000
4 Facsimile: 415.344.7050

5 Amanda J. Beane (*pro hac vice*)
ABeane@perkinscoie.com
6 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
7 Seattle, WA 98101-3099
Telephone: 206.359.8000
8 Facsimile: 206.359.9000

9 Attorneys for Defendants

10 REDBOX AUTOMATED RETAIL, LLC and SAVE MART SUPERMARKETS
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 WHEREAS, the Parties in the above-captioned litigation have advised the Court that they
3 have settled the litigation, the terms of which have been memorialized in a settlement agreement
4 (hereafter "Settlement Agreement").

5 WHEREAS, the parties have applied to this Court through a joint motion for an order (1)
6 certifying the proposed class for settlement purposes only, (2) granting preliminary approval of
7 the Agreement resolving all claims in the above-captioned matter, (3) directing notice to the
8 settlement class, and (4) setting a fairness hearing; and

9 WHEREAS, the Court has read and considered the Joint Motion for Preliminary
10 Approval, the points and authorities and declarations submitted therewith, the proposed
11 Settlement Agreement, and all of the supporting documents; and good cause appearing:

12 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 13 1. This Order incorporates by reference the definitions in the Settlement Agreement and all
14 terms defined therein shall have the same meaning in this Order as set forth in the
15 Settlement Agreement.
- 16 2. The Joint Motion for Preliminary Approval of the Agreement ("Joint Motion") is granted.
17 All pending pretrial deadlines and the trial date are hereby vacated. It appears to this
18 Court on a preliminary basis that the Settlement Agreement is fair, adequate and
19 reasonable.
- 20 3. The proposed Settlement Class is hereby preliminarily certified pursuant to FRCP 23(a)
21 and (b)(3) for purposes of settlement. The Settlement Class is defined as:

22
23 All Legally Blind individuals who, due to the visual interface utilized at the
24 Redbox Kiosks located in California, have attempted but were unable to access the
25 products or services available at Redbox Kiosks located in California, or were
26 deterred from accessing those products or services at the Redbox Kiosks in
27 California, between January 12, 2010 and November 12, 2014. "Legally Blind"
28 individuals include all persons with visual impairments who meet the legal
definition of blindness in that they have a visual acuity with correction of less than
or equal to 20 x 200 in the better eye, or they have a visual field limitation such
that the widest diameter of the visual field, in the better eye, subtends an angle no
greater than 20 degrees, as measured with a Goldmann III4e or equivalent size
stimulus. Some people who meet this definition have limited vision. Others have
no vision.

1
2 4. Certification of the settlement class shall be solely for settlement purposes and without
3 prejudice in the event that the Agreement is not finally approved by this Court or
4 otherwise does not take effect. Certification of the settlement class shall be vacated and
5 shall have no effect in the event that the Agreement is not finally approved by this Court
6 or otherwise does not take effect.

7 5. The Court hereby appoints and designates Named Plaintiffs Angela Griffith, Lisamaria
8 Martinez, Josh Saunders, Shana Ray and Jennifer Westbrook as representatives of the
9 Settlement Class.

10 6. The Court hereby appoints and designates the Named Plaintiffs' attorneys of record as
11 Class Counsel for the Settlement Class.

12 7. Notice of the proposed Settlement Agreement shall be given to class members.

13 The Long Form Notice attached as Exhibit C to the Agreement and the Short Form Notice
14 attached as Exhibit D to the Agreement are hereby approved as to form. Within 14 days
15 after Preliminary Approval, by August 13, 2014, the Parties shall distribute the Notice of
16 the proposed Settlement Agreement advising the Class of the terms of the proposed
17 Settlement Agreement and their right to object to the proposed Settlement Agreement.

18 This Notice shall be distributed as follows:

19 a) Class Counsel and Defendants shall ensure that the Long Form Notice and Short
20 Form Notice shall be posted on the Settlement Website for a period of 90 days.

21 The Settlement website shall also contain access to the Claim Form (in a form
22 materially identical to the Claim Form attached as Exhibit A to the Settlement
23 Agreement) and contain instructions for completing Claims Forms (in a form
24 materially identical to the Claim Form Instructions attached as Exhibit B to the
25 Settlement Agreement).

26 b) Defendants shall provide the Notice to any person that has complained to Redbox
27 or Save Mart about the accessibility of the Kiosks in California for the blind or
28 visually impaired, if any, and to the extent Redbox or Save Mart is reasonably

1
2 aware of such complaint and has either an email address or mailing address for
3 such person(s). If Redbox or Save Mart has an email address for any person
4 requiring notice under this Section, the Notice shall be provided by email in an
5 accessible electronic format, which are electronic formats, including Microsoft
6 Word Documents, properly formatted PDF files, RTF files, and text files, that can
7 be read using screen reading technology. If Redbox or Save Mart has a mailing
8 address for anyone requiring notice under this Section, the mailing addresses for
9 these individuals shall be provided to Class Counsel, and Class Counsel shall mail
10 to each individual through U.S. mail hard copies of the Notice in an alternate
11 accessible format. For purposes of this Section “alternate accessible format” refers
12 to Braille documents, large print documents, audio recordings, or other formats
13 that legally blind individuals can independently read.

- 14 c) Class Counsel shall post the Long Form Notice and Short Form Notice on the
15 website of Disability Rights Advocates for a period of 90 days;
- 16 d) Class counsel shall electronically mail the Long Form Notice to the following
17 email list serves, which exist to provide information relevant to blind Californians:
18 nfbc-info@nfbnet.org, cabs-talk@nfbnet.org, and the California Council of the
19 Blind’s email list serve.
- 20 e) Class Counsel shall electronically mail the Long Form Notice to the following
21 organizations serving blind persons in California:

22 Lions Center for the Blind
23 2115 Broadway
24 Oakland, CA 94612
25 Phone: (510) 450-1580
Website: <http://www.lbcenter.org/>

26 Vista Center for the Blind and Visually Impaired
27 2470 El Camino Real, Suite 107
28 Palo Alto, CA 94306
Phone: (650) 858-0202
Toll-Free phone: (800) 660-2009
Fax: 650-858-0214

1 Website: <http://www.vistacenter.org/>

2 Santa Clara Valley Blind Center

3 101 North Bascom Avenue

4 San Jose, CA 95128

5 Phone: 408-295-4016

6 Fax: 408-295-1398

7 Website: www.visionbeyondsight.org

8 San Francisco - Independent Living Resource Center San Francisco (ILRC-SF)

9 649 Mission Street, 3rd Floor

10 San Francisco, CA 94105

11 Phone: (415) 543-6222

12 Fax: (415) 543-6318

13 Website: <http://www.ilrcsf.org/>

14 Santa Clara Valley Blind Center

15 101 North Bascom Avenue

16 San Jose, CA 95128

17 Tel: 408-295-4016

18 Fax: 408-295-1398

19 Website: www.visionbeyondsight.org

20 San Jose - Silicon Valley Independent Living Center (SVILC)

21 2202 N. First Street

22 San Jose, CA 95131

23 Phone: (408) 894-9041

24 Fax: (408) 894-9050

25 TDD: (408) 894-9012

26 Website: <http://www.svilc.org/>

27 San Mateo - Center for Independence of Individuals with Disabilities (CID)

28 1515 South El Camino, Suite 400

San Mateo, CA 94402

Phone: (650) 645-1780

Fax: (650) 645-1785

Website: <http://www.cidsanmateo.org/>

East Bay Center for the Blind

2928 Adeline Street

Berkeley, CA 94703-2503

Phone: (510) 843-6935

Fax: (510) 843-6006

Website: <http://eastbaycenterfortheblind.org/>

The Hatlen Center for the Blind

2430 Road 20 #B112

San Pablo, CA 94806-3704

1 Phone: (510) 234-4984
2 Fax: (510) 234-4986
3 Website: <http://www.hcblind.org/about/>

4 California Department of Rehabilitation: Orientation Center for the Blind
400 Adams Street
5 Albany, CA 94706
Phone: (510) 559-1208
6 Website: <http://www.dor.ca.gov/OCB/index.html>

7 Berkeley - Center for Independent Living (CIL)
8 3075 Adeline Street, Ste. 100
Berkeley, CA 94703
9 Phone: (510) 841-4776
Fax: (510) 841-6168
10 Website: <http://www.cilberkeley.org/>

11 Concord - Independent Living Resources of Solano & Contra Costa Counties (ILR)
12 1850 Gateway Blvd., Suite 120
Concord, CA 94520
13 Phone: (925) 363-7293
Fax: (925) 363-7296
14 Website: <http://www.ilrsc.org/>

15 Hayward - Community Resources for Independent Living (CRIL)
16 439 A Street
Hayward, CA 94541
17 Phone: (510) 881-5743
Fax: (510) 881-1593
18 Website: <http://crilhayward.org/>

19 Marin Center for Independent Living (MCIL)
20 710 Fourth Street
San Rafael, CA 94901
21 Phone: (415) 459-6245
Fax: (415) 459-7047
22 Website: <http://www.marincil.org/>

23 Society for the Blind
24 1238 S Street
Sacramento, CA 95811
25 Phone: (916) 452-8271
Fax: (916) 492-2483.
26 Website: <http://www.societyfortheblind.org>

27 Blind & Visually Impaired Center of Monterey County
28 225 Laurel Avenue
Pacific Grove, CA 93950

1 Local Telephone: (831) 649-3505
2 Toll Free Telephone: (800) 404-3505
3 Website: <http://www.blindandlowvision.org>

4 California School for the Blind
5 500 Walnut Avenue
6 Fremont, CA 94536
7 Phone: (510) 794-3800
8 Website: <http://www.csb-cde.ca.gov>

9 Community Center for the Blind
10 130 West Flora Street
11 Stockton, CA 95202
12 Phone: (209) 466-3836
13 Website: <http://www.communitycenterfortheblind.org/>

14 Chico: Independent Living Services of Northern California (ILSNC)
15 The Jennifer Roberts Building
16 1161 East Avenue
17 Chico, CA 95926
18 Phone: (800) 464-8527
19 Fax: (530) 893-8574
20 VP/TTY: (530) 893-8527
21 Website: <http://ilsnc.org/>

22 Santa Rosa - Disability Services & Legal Center (DSLC)
23 521 Mendocino Ave
24 Santa Rosa, CA 95401
25 Phone: (707) 528-2745
26 Fax: (707) 528-9477
27 TTY: (707) 528-2151
28 Website: <http://www.disabilityserviceandlegal.org/>

Center for the Blind & Visually Impaired
1124 Baker Street
Bakersfield, CA 93305
Phone: (661) 322-5234
Website: www.cbvi.org

Auburn - Placer Independent Resource Services (PIRS)
11768 Atwood Road, Suite 29
Auburn, CA 95603
Phone: (530) 885-6100
Fax: (530) 885-3032
Website: <http://www.pirs.org/>

Bakersfield - Independent Living Center of Kern County (ILCKC)
5251 Office Park Drive, Ste. 200

1 Bakersfield, CA 93309
2 Phone: (661) 325-1063
3 Fax: (661) 325-6702
4 Website: <http://www.ilcofkerncounty.org/>

5 Fresno - Resources for Independence, Central Valley (RICV)
6 3008 North Fresno Street
7 Fresno, CA 93703
8 Phone: (559) 221-2330
9 Fax: (559) 221-2340
10 TTY: (559) 221-2342
11 Website: <http://www.ricv.org/>

12 Salinas - Central Coast Center for Independent Living (CCCIL)
13 318 Cayuga St. Suite 208
14 Salinas, CA 93901
15 Phone: (831) 757-2968
16 Fax: (831) 757-5549
17 TTY: (831) 757-3949
18 Website: <http://www.cccil.org/>

19 San Diego Center for the Blind and Vision Impaired
20 5922 El Cajon Boulevard
21 San Diego, CA 92115
22 Phone: (619) 583-1542
23 <http://www.sdcv.org/>

24 Braille Institute of America
25 741 North Vermont Avenue
26 Los Angeles, CA 90029
27 Local Telephone: (323) 663-1111
28 Toll Free Telephone: (800) 272-4553
Website: <http://www.brailleinstitute.org>

Claremont - Services Center for Independent Living (SCIL)
107 Spring Street
Claremont, CA 91711
Phone: (909) 621-6722
Fax: (909) 445-0727
Website: <http://scil-ilc.org/>

Downey - Southern California Rehabilitation Services (SCRS)
7830 Quill Drive, Suite D
Downey, CA 90242
Phone: (562) 862-6531
Fax: (562) 923-5274
Website: <http://scrs-ilc.org/>

1 Garden Grove - Dayle McIntosh Center (DMC)
2 13272 Garden Grove Blvd.
3 Garden Grove, CA 92843
4 Phone: (714) 621-3300
5 Fax: (714) 663-2094
6 Website: <http://www.daylemc.org/>

7 Long Beach - Disabled Resource Center (DRC)
8 2750 East Spring Street, #100
9 Long Beach, CA 90806-2249
10 Phone: (562) 427-1000
11 Fax: (562) 427-2027
12 Website: <http://www.drcinc.org/>

13 Riverside - Community Access Center (CAC)
14 6848 Magnolia Avenue, Suite 150
15 Riverside, CA 92506
16 Phone: (951) 274-0358
17 Fax: (951) 274-0833
18 TTY: (951) 274-0834
19 Website: <http://www.ilcac.org/>

20 San Bernardino - Rolling Start, Inc. (RSI)
21 570 West 4th Street, Suite 107
22 San Bernardino, CA 92401
23 Phone: (909) 884-2129
24 Fax: (909) 386-7446
25 TDD: (909) 884-7396
26 Website: <http://www.rollingstart.org/contact.html>

27 San Diego - Access to Independence San Diego (A2iSD)
28 8885 Rio San Diego Drive, Ste. 131
29 San Diego, CA 92108
30 Phone: (619) 293-3500
31 Fax: (619) 293-3508
32 TDD: (619) 293-7757
33 Website: <http://www.rehab.cahwnet.gov/ILS/ILC-A2ISD.html>

34 Santa Barbara - Independent Living Resource Center (ILRC)
35 423 West Victoria Street
36 Santa Barbara, CA 93101
37 Phone: (805) 963-0595
38 Fax: (805) 963-1350
39 Website: <http://www.ilrc-trico.org/>

40 Junior Blind of America
41 5300 Angeles Vista Boulevard
42 Los Angeles, CA 90043

Phone: (323) 295-4555

Website: <http://www.juniorblind.org/site/>

Guide Dogs for the Blind

350 Los Ranchitos Road,

San Rafael, CA 94903

Phone: (415) 499-4000

Fax: (415) 499-403

Website: <http://www.guidedogs.com/site/PageServer>

Guide Dogs of the Desert

60740 Dillon Road

Whitewater, CA 92282

Phone: (760) 329-6257 or (888) 883-0022

Fax: (760) 329-2866

Website: <http://guidedogsofthedesert.org/contact.html>

Guide Dogs of America

13445 Glenoaks Boulevard

Sylmar, CA 9134

Phone: (818) 362-5834

Fax: (818) 362-6870

Website: <http://www.guidedogsofamerica.org/>

Matilda Ziegler Magazine for the Blind

Email: Editor@matildaziegler.com

Website: <http://www.matildaziegler.com/about/>

AFB AccessWorld Magazine

Email: lhuffman@afb.net

Website: http://www.afb.org/aw/contact_aw.asp

8. The Court finds that the forms of notice to Class Members regarding the proposed Settlement Agreement, including the methods of dissemination to the proposed Settlement Class in accordance with the terms of this Order, meet the requirements for due process, the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, and constitute the best notice practicable under the circumstances.
9. Class Counsel shall file its motion for reasonable fees and costs no later than October 29, 2014 and shall provide instructions for accessing the motion for reasonable fees and costs and any exhibits to that motion on the Settlement Website and in the Notice to the Settlement Class.

- 1
- 2 10. No later than fourteen (14) days before the final fairness hearing described below, Class
- 3 Counsel shall file a sworn statement evidencing compliance with the notice provisions of
- 4 this order.
- 5 11. A hearing (the "Fairness Hearing") shall be held before this Court on _____ [the
- 6 parties propose December 17, 2014], at _____ in the United States District Court for
- 7 the Northern District of California (Oakland Courthouse), located at 1301 Clay Street,
- 8 Oakland, CA, 3rd Floor, Courtroom 3, to determine whether the Agreement shall be
- 9 granted final approval, and to address any related matters, including Class Counsel's
- 10 motion for an award of reasonable attorneys' fees and costs.
- 11 12. The Fairness Hearing may, from time to time and without further notice to the Settlement
- 12 Class (except those who have filed timely objections or entered appearances), be
- 13 continued or adjourned by order of the Court.
- 14 13. Members of the Settlement Class may register their objections to the Agreement by filing
- 15 written objections with this Court. Objections and accompanying verification must be
- 16 received by November 12, 2014. Members of the Settlement Class who also wish to
- 17 appear at the Fairness Hearing and object to the Agreement in person must so state at the
- 18 time they file their written objections. Any Settlement Class member who does not make
- 19 his or her objection in the manner provided for in this Order shall be deemed to have
- 20 waived such objection.
- 21 14. Members of the Settlement Class may not opt out of the settlement of the injunctive and
- 22 declaratory relief claims. Members of the Settlement Class may opt out of the damages
- 23 portion of the Agreement by visiting the Settlement Website and following the
- 24 instructions on that website for completing and submitting an on-line opt-out statement or
- 25 by submitting a written opt-out statement to the Administrator identified in Paragraph 16
- 26 below by November 12, 2014.
- 27 15. Any member of the Settlement Class who does not opt out in the manner provided by the
- 28 Agreement will be bound by the Final Judgment dismissing the Action with prejudice.

1
2 16. Kurtzman Carson Consultants LLC (“KCC” and/or “Administrator”) is hereby appointed
3 as Administrator for opt-out submissions and administration of damages claims under the
4 Agreement. The parties and KCC will administer damages claims as provided for under
5 the Agreement. KCC shall maintain the Settlement Website and shall keep a written
6 record of any individuals who opt out of the damages portion of the Agreement. KCC
7 shall serve copies of any opt-out statements it receives on Class Counsel and Counsel for
8 Redbox not later than three (3) business days after receipt thereof and shall file the opt-out
9 statements with the Clerk of the Court not later than ten (10) business days prior to the
10 date set for the Final Approval hearing.

11 17. All responses to objections shall be filed with the Court and served by mail on the Parties’
12 Counsel and on any objectors no later than fourteen (14) days before the Fairness Hearing.

13 18. Counsel for the parties is hereby authorized to utilize all reasonable procedures in
14 connection with the administration of the Agreement which are not materially inconsistent
15 with either this Order or the terms of the Agreement.
16

17 IT IS SO ORDERED:
18

19 Dated: _____

PHYLLIS J. HAMILTON
Judge of the United States District Court
Northern District of California
20
21
22
23
24
25
26
27
28